

DOCKET

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Petitioners

v.

James M. Thompson, et al.

Docketed:
April 4, 1988

Court: United States Court of Appeals
for the Sixth Circuit

Counsel for petitioner: Jones, Barbara W.

Counsel for respondent: Elder II, Joseph S.

Entry	Date	Note	Proceedings and Orders
1	Apr 4 1988	G	Petition for writ of certiorari filed.
2	May 24 1988		Brief amici curiae of Tennessee, et al. filed.
3	May 27 1988		Brief of respondents James M. Thompson, et al. in opposition filed.
4	May 27 1988	G	Motion of respondents for leave to proceed in forma pauperis filed.
5	Jun 1 1988	-	*Corrected affidavit in route.
6	Jun 7 1988		DISTRIBUTED. June 23, 1988
7	Jun 27 1988		Motion of respondents for leave to proceed in forma pauperis GRANTED.
8	Jun 27 1988		Petition GRANTED. *****
9	Aug 5 1988		Joint appendix filed.
10	Aug 5 1988		Brief of petitioner Kentucky, Dept. of Corrections filed.
11	Aug 11 1988		Brief amici curiae of Tennessee, et al. filed.
12	Aug 25 1988		Record filed.
		*	Certified copy of proceedings received.
13	Aug 27 1988		Record filed.
		*	Certified copy of original record received.
14	Sep 2 1988		Brief of respondents James M. Thompson, et al. filed.
15	Oct 5 1988		Reply brief of petitioners Kentucky, Dept. of Corrections, et al. filed.
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17	Nov 4 1988		CIRCULATED.
18	Jan 18 1989		ARGUED.

**PETITION
FOR WRIT OF
CERTIORARI**

87-1815

No. _____

Supreme Court, U.S.

FILED

MAY 4 1988

JOSEPH F. SPANIOLO, JR.,
CLERK

In The
Supreme Court of the United States

October Term, 1987

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, Petitioner,

v.

JAMES M. THOMPSON, et al, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH S. ELDER II
710 West Main Street
Louisville, Kentucky 40202
502/587-8444
Counsel of Record

BARBARA W. JONES
Corrections Cabinet
Office of General Counsel
State Office Building
Room 500
Frankfort, Kentucky 40601
502/564-2024
Counsel for Petitioner

8470

QUESTIONS PRESENTED

1. Whether policies provided correctional officers and duty officers as guidelines to determine whether to refuse a particular visitor entrance whose presence is believed to constitute a clear and probable danger to the security of the institution creates a liberty interest for the inmate?
2. Whether prison guidelines for correctional and duty officers to use in admitting visitors can create for the inmate such a liberty interest in visitation with a particular visitor to require minimal due process procedures for the inmate?
3. Whether the duty officer's finding that "there are reasonable grounds to believe" a visitor's presence could constitute a "clear and probable danger" to the safety, security and orderly operation of the institution is such a limitation of the officer's discretion to give rise to a liberty interest for the inmate?

LIST OF PARTIES

The parties to the proceedings below were the Petitioner, Commonwealth of Kentucky, Department of Corrections; David H. Bland, Dewey Sowders, Warden; James Dent, Principal Chaplain; James W. Stephens, Warden of Custody; Tom Campbell, Warden of Treatment; Harry Rothgerber, Member, Board of Parole; Steven T. Smith, Acting Superintendent; Burnett Napier, Chair Person of Kentucky Board of Parole; Glenn Wade, Member, Kentucky Board of Parole; Newton McCravy, Jr., Member, Kentucky Board of Parole; and John E. White, Member, Kentucky Board of Parole; and the Respondents, James Thompson, Wilgus Haddix, Leslie Branum, Walter Harris, Clifford Elliott, and George V. Sholar.

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In The

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COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, Petitioner,

v.

JAMES M. THOMPSON, et al, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

The Petitioner, Commonwealth of Kentucky, Department of Corrections and David H. Bland, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered in the above-titled proceeding on November 19, 1987. Petition for Rehearing En Banc was denied January 6, 1988.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Sixth Circuit is reported at 833 F.2d 614 (6th Cir. 1987) and is reprinted in the Appendix hereto, page A-1, *infra*.

The Memorandum Decision of the United States District Court for the Western District of Kentucky (Johnstone, E. H.), has not been reported, it is reprinted in the Appendix hereto, page A-15, *infra*.

Subsequent to the entry of a Federal Consent decree addressing prison conditions¹, on January 29, 1986 the Plaintiff Class filed a Motion for Specific relief in the United States District Court for the Western District of Kentucky with respect to visiting policies.

On June 26, 1986, the United States District Court for the Western District granted some of the relief sought by Plaintiffs and found that a protectable liberty interest existed in the Consent Decree with respect to visitation thus requiring the implementation of minimal due process procedures when visits were prohibited (App. A-15).

On Defendants' appeal, the Sixth Circuit Court of Appeals on November 19, 1987 entered a Judgment and Opinion affirming the Western District's Orders in part and remanded the case for further findings as to which procedures were applicable (App. A-1).

A Petition for En Banc Rehearing was denied on January 6, 1988 (App. A-14).

JURISDICTION

The jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. 1254 (1).

¹*Kendrick v. Bland*, 541 F. Supp. 21 (W.D. Ky. 1981).

STATEMENT OF THE CASE

This appeal arises from a prison conditions suit filed by the male offenders incarcerated at the Kentucky State Reformatory at LaGrange, Kentucky (herein referred to as "KSR"). The parties below entered into a Consent Decree on May 4, 1980 which addressed all conditions of confinement at the Kentucky State Reformatory and the Kentucky State Penitentiary. *Kendrick v. Bland*, 541 F. Supp. 21 (W.D. KY. 1981).

Plaintiff Class filed their motion as a result of two incidents which occurred at "KSR" regarding the suspension of certain visitors. In one instance, Kenneth Bobbitt's mother had been denied the right to visit him for a limited period of time because she had brought to an institution an individual by the name of Gerald Eastman who had previously been barred from the institution for smuggling contraband. Allegedly, Mr. Eastman came to the institution with Mr. Bobbitt's mother's assistance using false identification to avoid being denied a visit.

In the second instance, inmate Kevin Black's mother and girlfriend were barred from the institution for a limited period of time after Kevin Black was convicted of possession of contraband received immediately after a visit with his mother and girlfriend.

On behalf of themselves and the Class, these inmates argued that the suspension of their visitors' privileges without due process hearing violated the open visitation policy of Section 12 of the Consent Decree and that the suspension of their visitors' right to visit without due process protections was a violation of the Due Process Clause.

The Plaintiff Class asked the District Court to order Defendants to conduct full-blown due process hearings prior to the suspension of any visit at "KSR", and, in emergency situations Plaintiff Class agreed a visitor could be suspended from visiting an inmate pending the outcome of a due process hearing.

The basis for the motion and the relief sought was pursuant to the language in Section 12 of the Consent Decree which Plaintiffs claimed established the right of an inmate to visit with any person of their choice. *Kendrick*, supra, at 37 (W.D. Ky. 1981). Therefore, Plaintiffs claimed any restriction of visitors at "KSR" must be done in a manner consistent with the Due Process Clause.

In opposition, Defendants argued that Plaintiffs' interpretation of their obligations under the Consent Decree were improper. The Consent Decree did not create additional rights beyond those contained in the visitation policies referenced in the Consent Decree. The Consent Decree merely required the continued implementation of the visitation policy that was in place at the signing of the Consent Decree which did not provide for a due process hearing before the denial of entry to a particular prisoner.

The District Court found that the language of the Consent Decree established mandatory visitation protected by the Due Process Clause and ordered Defendants to implement minimal due process procedures to include notice to the inmate of and reasons for the revocation or suspension of a visitor and an opportunity for an inmate to respond (App. A-18). Specifically, the District Court found:

... the language of the Consent Decree is mandatory in character, within the meaning of *Hewitt v. Helms*, *supra*, in that it requires continuation of an open visitation policy. Therefore, the plaintiffs possess a liberty interest in open visitation, and defendants must provide minimal due process procedures when visitation of a prisoner is suspended or revoked. Those procedures should include, and may be patterned after, those as provided in *Hewitt v. Helms*, 103 S. Ct. at 874: an informal, nonadversary review in which a prisoner receives notice of and reasons for the revocation, and an opportunity to respond (App. A 18).

The Court did not determine whether the policies themselves created a protectable interest but based its decision solely on the "mandatory" language contained in the Consent Decree.

On appeal, Defendants challenged the Court's finding that the Consent Decree created a right protected by the Due Process Clause and argued that the District Court erroneously characterized the language of the Consent Decree as creating a constitutionally protected interest for the Plaintiff Class.

The Sixth Circuit affirmed the District Court's finding that a liberty interest existed protected by the Due Process Clause. However, the Sixth Circuit disagreed with the District Court as to the source of the interest. The Sixth Circuit determined that the protected interest came from the specific language contained in the Cabinet and institutional policies and not from the Consent Decree² (App. A-9-10).

The following language of the Cabinet policies were reviewed by the Sixth Circuit:

[Cabinet Policy]

403.06 Visitors Excluded³

Certain visitors who are either a threat to the security or order of the institution or nonconducive to the successful re-entry of the inmate to the community may be excluded. These are, but not restricted to:

²The Sixth Circuit did consider and make reference to the "mandatory language" of the Consent Decree but concluded:

We do not reach, therefore, the issue of whether a Consent Decree can create a liberty interest enforceable beyond a District Court's judicial power to enforce its Orders. See footnote, *Green v. McCastle*, 788 F.2d 116, 1123-24 (5th Cir. 1986)(App. A-10).

³Relevant excerpts from Corrections Cabinet Policy and Procedure #16.1, Section 403.06 - issue date, September 28, 1981; effective date, September 28, 1981.

- A. The visitor's presence in the institution would constitute a clear and probable (sic) danger to the institution's security or interfere with the orderly operation of the institution.
- B. The visitor has a past record of disruptive conduct.
- C. The visitor is under the influence of alcohol or drugs.
- D. The visitor refuses to submit to search, if requested to do so, or show proper identification.
- E. The visitor is directly related to the inmate's criminal behavior.
- F. The visitor is currently on probation or parole and does not have special written permission from both his or her Probation or Parole Officer and the institutional Superintendent. (App. A-22-23)

[Institutional Policy]

STATEMENT OF POLICY AND PURPOSE⁴

Although administrative staff reserves the right to allow or disallow visits, it is the policy of the Kentucky State Reformatory to respect the right of inmates to have visits in the spirit of the Court decisions and the Consent Decree, while insuring the safety and security of the institution. The following are the procedures to be enforced in regard to all types of visits. (Ap. A-26)

⁴These are relevant excerpts from Kentucky State Reformatory Policy and Procedure #16-00-01 - issue date, September 30, 1985; effective date, September 30, 1985.

... "[a]n inmate is allowed three (3) separate visits . . . per week." (App. A-28)

AND

1. A visitor may be denied a visit at any time if one of more of the following exists or there are reasonable grounds to believe that:

a. The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including, but not limited to:

- (1) The visitor has a past record of disruptive conduct.
- (2) The visitor is under the influence of alcohol or drugs.
- (3) The visitor refuses to submit to search or show proper identification upon request.
- (4) The visitor is directly related to the inmate's criminal behavior.
- (5) The visit will be detrimental to the inmate's rehabilitation.
- (6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.

(7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden.

(8) The visitor has previously violated institutional visiting policies.
(App. A-49-50)

The Sixth Circuit found that the policies substantively limited the officials' discretion and established an interest protected by the Due Process Clause. Specifically, the Sixth Circuit stated:

We turn now to the determination of whether the state went beyond the establishment of mere guidelines by using "mandatory language" in connection with "specific substantive predicates," *Hewitt*, 459 U.S. at 472. That is, whether the state, in the words of *Olim*, placed "substantive limitations on official discretion" with "particularized standards." *Olim*, 461 U.S. at 249. For the reasons set out below, we believe the state did do more than just establish guidelines. (App. A-8)

... Given the regulatory and mandatory language discussed above, a liberty interest was created under the circumstances here. (App. A-9-10)

The Court then remanded the decision back to the Court for a determination as to which regulations covered the Plaintiff Class and what due process procedures would be necessary when visitation is denied (App. A-10).

A petition for Rehearing En Banc was filed by Defendants. In the Petition, Defendants argued that this decision was contrary to the decisions of this Court, in particular: *Hewitt v. Helms*, 459 U.S. 460, 74 L.Ed.2d 676, 103 S. Ct. 864 (1983), *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 60 L.Ed.2d 668, 99 S. Ct. 2100 (1979) and *Wolff v. McDonnell*,

418 U.S. 539, 41 L.Ed.2d 935, 94 S. Ct. 2963 (1974). Defendants further argued the decision conflicted with the Sixth Circuit's own opinions, in particular: *Beard v. Livesay*, 798 F.2d 874 (6th Cir. 1984); *Franklin v. Aycock*, 795 F.2d 1253 (6th Cir. 1984); *Mayes v. Trammel*, 751 F.2d 135 (6th Cir. 1984); *Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980).

Defendants further argued that if the decision was allowed to stand, Corrections officials throughout the Circuit could not draft any policies affecting inmates without creating constitutionally protectible interests. Defendants requested the rehearing on the grounds that the drafting of policies would become an impossible task and that such a concern was recognized by this Court in *Hewitt*, *supra*. Defendants argued that the guidelines established in the policies could not be considered more than procedural guidelines to channel decision-making and that the language of the policies was not mandatory in nature as described in *Greenholtz*, *supra*, and *Hewitt*, *supra*.

The Petition for Rehearing En Banc was denied on January 6, 1988. This Petition now follows.

REASONS FOR GRANTING THE WRIT

I.

THESE POLICIES ADDRESS THE DAILY OPERATION OF A PRISON AND THE RESTRICTIONS ARE MINOR IMPOSITIONS THUS WARRANTING DIFFERENT TREATMENT FROM STATUTES AND REGULATIONS IN OTHER AREAS AS SUGGESTED IN HEWITT V. HELMS

A. The Sixth Circuit's finding of a constitutionally protected interest in visitation extends the principles of the Due Process Clause beyond Constitutional limits and conflicts with the decisions of this Court and other circuits.

The question for review is whether Kentucky visitation policies entitle a state prisoner to minimal due process protections when his visitor is prohibited from visiting him.

It is without question that this Court and the Circuit Courts have issued many opinions in recent years addressing the question as to whether state statutes and/or regulations have established a constitutionally protected liberty interest. In most of those cases, the courts have dealt with either parole and/or Corrections statutes and regulations. Similarly in this case, Corrections policies are the subject for review. However, these policies do not deal with substantive liberty interests addressed in *Greenholtz, supra*, *Wolff, supra*, and *Hewitt, supra*. These policies address the day-to-day operations of an institution and thus, the caveat contained in *Hewitt, supra*, is directly presented. This Court has suggested that prison regulations might warrant "treatment, for purposes of creation of entitlements to 'liberty' different from statutes and regulations in other areas."

- B. This Court has expressed concern about penalizing prison officials for implementing procedural guidelines that channel the decision-making of prison officials when the development of procedures has been recognized among experts as a "salutary" development

These questions and concerns are squarely presented today. An examination of the Kentucky visitation policies clearly establishes they are specific and detailed for the precise purpose of establishing an orderly operation of a daily visiting program in a large penal institution (App. 19-57). Corrections Policy 16.1 is a general "umbrella" policy applicable to all institutions and the "KSR" policies augment the general policy. The policies are totally devoid of any substantive procedures once a visitor is denied entry. The only procedure regarding the denial of a visit is that the final decision rests with the Duty Officer.

Procedures alone do not create the presumption that a protectable interest exists at law and this Court has acknowledged that there could be other reasons that the state chooses to implement procedures other than to protect substantive rights. *Olim*, 461 at 250, 103 S. Ct. at 748 (footnote omitted); *Hewitt*, 459 U.S. at 471, 103 S. Ct. at 871. In some instances, the existence of detailed procedures may evidence an intent to limit an official's discretion. Here, there is a total absence of any procedural mechanisms for the denial of a visit, thus, it cannot be implied that the state intended to limit the discretion of its officials when denying visits.

The policies establish minimal guidelines for state officials when a visitor is denied entry. The only limitation put on the state official is that the official should have reasonable cause to believe that the visitor could constitute a threat to the security of the institution (App. 22-23, 49-50). This hardly constitutes a substantive limitation on state official's discretion when the primary function of prison administrators is to maintain the security of an institution in order to protect the community, staff and inmates. This Court has always acknowledged this as the primary role of a prison official. *Bell v. Wolfish*, 441 U.S. 520, 60 L.Ed.2d 447, 99 S.Ct. 1861 (1979); *Whitley v. Albers*, 47 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986); *Turner v. Safley*, 96 L.Ed.2d 64, 107 S.Ct. 2254 (1987) and *O'Lone v. Shabazz*, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987).

These policies are comparable to a policy examined by the Third Circuit affecting inmate placement in administrative segregation in a county jail. *Stephanie v. Wagner*, 835 F.2d 497 (3rd Cir. 1987). There the administrative regulations were found not to have created a constitutionally protected interest. The Pennsylvania procedures had a list of circumstances under which an inmate in the county jail could be placed in administrative segregation. That list was not considered to be exclusive or exhaustive. They were considered by the Third Circuit to be examples of when an individual could be viewed as a security threat to the jail. Thus, the Sixth Circuit's reasoning here is in conflict with the Third Circuit on comparable policies.

When this Court has found a constitutionally protected interest created by state statute and regulation, mandatory language was unmistakable. In *Hewitt*, this Court found:

. . . the Commonwealth has gone beyond simple procedural guidelines. It has used language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must," be employed, see n. 6, *supra*, and that administrative segregation will not occur absent specified substantive predicates - viz., "the need for control," or "the threat of a serious disturbance." *Hewitt* at 471-472.

And:

But on balance we are persuaded that the repeated use of explicitly mandatory language in connection with requiring specific substantive predicates demands a conclusion that the state has created a protected liberty interest. *Hewitt* at 472.

In *Greenholtz*, this Court emphasized that although the Nebraska statute had established a constitutionally protected interest in parole, that statute was unique and any subsequent statute must be reviewed on a case-by-case basis. The specific unique statutory language reviewed by the Court was:

Whenever the Board of Parole considers the release of a committed offender . . . it *shall* order his release *unless* . . . *Greenholtz* at 11. [emphasis added]

In *Vitek*, this Court found a protected liberty interest from two sources, the Constitution and the state statutes which clearly limited the state's authority to involuntarily transfer a convicted felon to a mental facility unless certain conditions were certified to exist by a medical professional. *Vitek v. Jones*, 445 U.S. 480, 63 L.Ed.2d 552, 100 S. Ct. 1254 (1980).

In other cases this Court found no such mandatory language existed or could be implied from the statute or regulations and thus, no protectable liberty interest was present. In *Meachum*, this Court clearly rejected the proposition that any grievous loss suffered by a person at the hands of state officials was sufficient

to invoke the procedural Due Process Clause. *Meachum v. Fano*, 427 U.S. 215, 49 L.Ed.2d 451, 96 S. Ct. 2532 (1976). There, this Court found that the official's discretion was not limited when transferring a duly convicted prisoner from one institution to another recognizing that some institutions would be preferable to others by the prisoner population. This Court expressed concern that to find the existence of protected interests in a circumstance such as an administrative decision to transfer a prisoner from one institution to another would "subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts." *Meachum* at 225.

In *Olim*, this Court reviewed relevant administrative regulations which permitted an administrator to transfer an inmate outside the confines of the state after reviewing a recommendation from a committee. That administrator was the final decision-maker and could accept or reject the recommendation of the committee. Although the Hawaii committee procedures were detailed and substantive in nature requiring notice and an opportunity to be heard and acknowledged that a transfer was a grievous loss to an inmate, this Court found that no protectable liberty interest existed. The administrator's discretion was completely unfettered, and no particularized standards or criteria existed. *Olim v. Wakinekona*, 461 U.S. 238, 75 L.Ed.2d 813, 103 S. Ct. 1741.

Here, no substantive procedures are present which can be implied as an intent by state officials to limit discretion, no such strictures exist. No mandatory language comparable to that found in *Greenholtz*, *supra*, *Vitek*, *supra*, and *Hewitt*, *supra*, exists. Finding such an interest conflicts with this Court's concern expressed in *Meachum* and more recently in *Hewitt* as it permits Federal Court intrusion on the day-to-day operations of prison. Such regulations mandate different treatment by this Court.

II.

**THE SIXTH CIRCUIT DECISION
PENALIZES STATE OFFICIALS
WHEN DRAFTING ANY POLICY
THAT PROVIDES SOME BENEFIT TO
A PRISONER AND PERMITS
FEDERAL INTRUSION ON THE
DAILY OPERATIONS OF A PENAL
INSTITUTION**

- A. The effect of the lower court's decision is to inhibit substantially Corrections officials from drafting policies that may confer a benefit on an inmate

These visitation policies are typical of most correctional visitation policies throughout the country and they are written with reference to state statutes, professional standards as well as any relevant court decisions (see introduction to KSR policy, (App. A-26). The description of the benefit/privilege that could be available to the prisoner as well as the terms and condition for participation in the program are usually set out with precise detail. The officials generally reserve the right to refuse prisoner participation in the program if circumstances exist where they believe participation could constitute a security threat to other inmates, staff, the institution or the community. Many benefits other than visitation are available to inmates throughout the country in a correctional institution and are written in policies very similar to those set out in Kentucky's policies on visitation. Some of the kind of benefits that are available to inmates include furloughs, honor housing, mail, telephone calls, work programs, study programs, library services, outside trips, recreation, escorted leaves, community center programs, and inmate clubs. Finding that such policies create a constitutionally protected interest is untenable.

- B. This Court has indicated it may be necessary to treat prison regulations differently from statutes and regulations in other areas to avoid federal intrusion on minor daily prison operations

That question of federal intrusion is now before the Court today. A long line of decisions by this Court clearly establishes a refusal and reluctance to engage in the day-to-day operation of a prison. This Court vociferously rejected that notion in *Meachum*, *supra*, and this Court has in every opinion addressing prison conditions, statutes and regulations, acknowledged the primary function of a prison administrator is to maintain order and security for the inmates, staff and the community. *Bell v. Wolfish*, *supra*; *Rhodes v. Chapman*, 425 U.S. 337 (1981); *Whitley v. Albers*, *supra*; *O'Lone v. Shabazz*, *supra*; *Turner v. Safley*, *supra*. A prison policy that grants the authority to reject participation in a program because it would threaten the security of the institution is constitutionally permissible. It is not a substantive limitation on a state official's discretion and should not be interpreted so. To interpret that such guidelines are more than channeling a decision-maker's choices would require this Court and the lower courts to supervise the implementation of all programs in prisons throughout this country. In prison, availability to programs are always premised on the grounds that they would be denied if such would constitute a threat to the security of the institution. It is an administrator's primary role.

This Court also acknowledged a concern that finding protectable interests in prison regulations might penalize a "salutary" development that has occurred in Corrections. *Hewitt* at 470. If Corrections, through its written policies, cannot give examples and guidance to its officials without creating a constitutionally protected interest, benefits that may be offered inmates as an incentive and to encourage rehabilitation are effectively undermined. No policies or vague policies will be the alternative which serves to the detriment of the state and the prisoners, a choice Corrections administrators do not prefer.

In order to avoid the imposition of federal courts at every turn in the daily operation of a prison, Corrections is left with a poor choice. Defendants are being penalized for having implemented policies which guide the decision-maker and will be forced to cease and desist from implementing such policies unless different standards are applied to regulations in a prison setting that affect daily operations. This concern was also expressed in a concurring opinion in the Sixth Circuit opinion below. In particular, Judge Welford stated:

My reluctance about creation of a liberty interest involves the following considerations. Visitation is merely a part of the daily operation of the prison, which affects only the circumstances of the prisoner's situation in prison. By contrast, parole and good-time credit decisions affect a prisoner's *release* from custody, which fully implicates his "liberty" in the ordinary meaning of the word. Moreover, "[t]he concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution." *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 126 (1977). Decisions concerning visitation privileges, therefore, involve, in my view, even less of an encroachment on a prisoner's remaining "freedoms" while in prison than do decisions concerning his associational rights or placement within the prison. Administrative or disciplinary segregation directly affects the prisoner's "liberty" in that it further restricts his freedom to be in certain areas or associate with certain inmates. The decision to exclude an outside visitor does not affect in the same sense or degree the "freedoms" of association or placement within the prison. Furthermore, excluding a certain visitor but allowing others to visit the prisoner represents a

relatively minor "deprivation." I recognize also that a state may create a liberty interest in freedom from even relatively minor deprivations. See *Hewitt v. Helms*, 459 U.S. 460, 470-71 (1983).

Applying these *Hewitt* criteria to the facts of this case presents a very close question for resolution. (App. 11-13)

Obviously, Judge Welford was somewhat concerned as to whether that Court had gone beyond the purpose of the Due Process Clause by finding that these policies did substantively limit the discretion of state officials.

CONCLUSION

The defendants urge that this Court consider the ramifications of this decision and the possible effect on Corrections officials not only in this circuit but throughout the country who draft procedures comparable to this on a regular basis in many program areas. They now have no guidance and cannot determine what type of procedures could be considered the "channelling" of a decision-maker versus substantively limiting an official's discretion. It is important for this Court to review this decision in order to provide guidance to state prison administrators and to exclude prison regulations from such due process review.

THEREFORE, Petitioner requests that Writ of Certiorari be granted.

Respectfully submitted,

BARBARA W. JONES
Corrections Cabinet
Office of General Counsel
State Office Building
Room 500
Frankfort, Kentucky
40601
502/564-2024
Counsel for Petitioner

No. 86-5836

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES M. THOMPSON, ET AL.,
Plaintiffs-Appellees,

v.

COMMONWEALTH OF KENTUCKY,
DEPT. OF CORRECTIONS, ET AL.,
Defendants-Appellants.

ON APPEAL from the
United States District
Court for the Western
District of Kentucky.

APPENDIX

Decided and Filed November 19, 1987

Before: MERRITT, MARTIN and WELLFORD, Circuit
Judges.

MARTIN, Circuit Judge, delivered the opinion of the
court, in which MERRITT, Circuit Judge, joined.
WELLFORD, Circuit Judge, (pp. 11-13) delivered a separate
concurring opinion.

BOYCE F. MARTIN, JR., Circuit Judge. The sole issue
presented by this case is whether a consent order and prison
policy created a liberty interest in visitation privileges such
that due process requires some procedure before denying visi-
tation. The district court found that a liberty interest did
exist. We agree.

It is well recognized that there are two means by which a constitutionally protected liberty interest can be found to exist. First, certain rights and interests are so inherent in our society that they may be infringed only if procedural due process has been afforded. Second, the state may build up the public's expectations of a protected interest in other areas by enactment of statutes, regulations and other state actions. In this situation, too, due process requirements must be complied with before that state can limit the individual's interest in the created liberty. Before we apply this approach, however, we summarize the relevant facts.

Plaintiffs, prisoners at the Kentucky State Reformatory and Kentucky State Penitentiary, filed a lawsuit concerning prison interests. The lawsuit led to a consent decree addressing conditions of confinement at the State Reformatory and State Penitentiary. See *Kendrick v. Bland*, 541 F. Supp. 21, 27-49 (W.D. Ky. 1981), *aff'd*, 740 F.2d 432 (6th Cir. 1984). Concerning visitation, the consent decree declared: "The Bureau of Corrections encourages and agrees to maintain visitation at least at the current level with minimal restrictions. . . . Defendants shall continue their open visitation policy." 541 F. Supp. at 37.

The subsequently-adopted procedures concerning visitation regulations at Kentucky State Reformatory, under which plaintiffs sued defendants in this case, declared:

STATEMENT OF POLICY AND PURPOSE

Although administrative staff reserves the right to allow or disallow visits, it is the policy of the Kentucky State Reformatory to respect the right of inmates to have visits in the spirit of the Court decisions and the Consent Decree, while insuring the safety and security of the institution. The following are the procedures to be enforced in regard to all types of visits.

Kentucky State Reformatory Procedures Memorandum, No. KSR 16-00-01 (Sept. 30, 1985). This policy stated that "[a]n inmate is allowed three (3) separate visits . . . per week." *Id.* ¶ B.3. Concerning refusal of visits, the policy stated:

1. A visitor may be denied a visit at any time if one of more of the following exists or there are reasonable grounds to believe that:

a. The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including, but not limited to:

- (1) The visitor has a past record of disruptive conduct.
- (2) The visitor is under the influence of alcohol or drugs.
- (3) The visitor refuses to submit to search or show proper identification upon request.
- (4) The visitor is directly related to the inmate's criminal behavior.
- (5) The visit will be detrimental to the inmate's rehabilitation.
- (6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.
- (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden.
- (8) The visitor has previously violated institutional visiting policies.

Id. ¶ K. The 1985 policy also stated that the Duty Officer was responsible for denying visits for the above reasons. If a staff

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member believed a visitor should be denied, the staff member should notify the Duty Officer, who had the final decision. *Id.* ¶ K 2, 3.

In 1985, inmate Kenneth Bolitt's mother was denied visitation rights for a short time after bringing to the institution a man previously barred from the institution for smuggling contraband. Another inmate's mother and girlfriend also had their visitation privileges suspended when the inmate was convicted of receiving contraband after one of their prior visits. In both instances, the visitation privileges were suspended without a hearing. Plaintiffs filed a motion seeking a court order requiring defendants to establish procedures, including a notice and hearing, to be followed before restricting visitation.

Plaintiffs claim that the due process clause requires such procedures to protect the inmates' liberty interests. The district court agreed with plaintiffs and ordered defendants to establish at least minimal procedures. The necessary predicate to that order was the district court's finding that the inmates had a liberty interest in visitation privileges. The question on appeal is whether the claimed liberty interest exists.

Prison officials have generally been found to possess broad discretionary authority over prison administration. As the Supreme Court has recognized,

"[C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." (Footnote omitted.)

Jones v. North Carolina Prisoners' Union, 433 U.S. 119, 126 (1977) (quoting *Procunier v. Martinez*, 416 U.S. 396, 405

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(1974)). "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations of our penal system." *Id.* at 125. The Supreme Court has "consistently refused to recognize more than the most basic liberty interests in prisoners." *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). Thus, the Supreme Court has found no "constitutional or inherent right" to placement in any particular prison or state, *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983), *Meachum v. Fano*, 427 U.S. 215, 225 (1976), placement in any particular section within a prison, *Hewitt v. Helms*, 459 U.S. at 468, parole, *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979), or good-time credit for satisfactory behavior, *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

Specifically addressing visitation privileges, we have ruled that "[p]rison inmates have no absolute constitutional right to visitation." *Bellamy v. Bradley*, 729 F.2d 416, 420 (6th Cir.), *cert. denied*, 469 U.S. 845 (1984). This conclusion is in keeping with the above recited Supreme Court decisions. The Court in *Hewitt* asserted that the issues of parole and good-time credits "involve release from institutional life altogether, which is a far more significant change in a prisoner's freedoms than that at issue here [administrative segregation], yet in *Greenholtz* and *Wolff* we held that neither [parole nor good-time credits] involved an interest independently protected by the Due Process Clause." *Hewitt*, 459 U.S. at 468. That reasoning compels the same conclusion here with respect to visitation privileges. The denial of a visit from a given visitor has a far less significant impact on a prisoner's "freedoms" than parole, good-time credits, or even administrative segregation. Because these rights are not inherently protected by the due process clause, visitation privileges are not inherent constitutional rights.

Despite the absence of a claim of inherent constitutional right, a state may nevertheless create a liberty interest by enacting a statute or regulation, *Hewitt*, 459 U.S. at 469, and

we have further held that liberty interests can be created by prison officials' policy statements and other promulgations. *Bills v. Henderson*, 631 F.2d 1287, 1291 (6th Cir. 1980) (citing *Walker v. Hughes*, 558 F.2d 1247, 1255 (6th Cir. 1977)). Courts have found, for example, that state statutes or prison policies have created liberty interests in not being placed in administrative or disciplinary segregation, *Hewitt*, 459 U.S. at 472, *Franklin v. Aycock*, 795 F.2d 1253, 1260 (6th Cir. 1986), *Bills v. Henderson*, 631 F.2d at 1294, not being transferred from a prison to a mental hospital, *Vitek v. Jones*, 445 U.S. 480, 489 (1980), not being reclassified from minimum to medium security, *Beard v. Livesay*, 798 F.2d 874, 879 (6th Cir. 1986), eligibility for parole, *Greenholtz*, 442 U.S. at 12, *Mayes v. Trammel*, 751 F.2d 175, 179 (6th Cir. 1984), not being placed in solitary confinement, *Wright v. Enomoto*, 462 F. Supp. 397, 403 (N.D. Cal. 1976), *aff'd mem.*, 434 U.S. 1052 (1978), and receiving good-time credit for satisfactory behavior, *Wolff*, 418 U.S. at 556-57.

As the Supreme Court asserted in *Hewitt*,

There are persuasive reasons why we should be loath to transpose all of the reasoning in the cases just cited to the situation where the statute and the regulations govern the day-to-day administration of a prison system. The deprivations imposed in the course of the daily operations of an institution are likely to be minor when compared to the release from custody at issue in parole decisions and good-time credits. Moreover, the safe and efficient operation of a prison on a day-to-day basis has traditionally been entrusted to the expertise of prison officials, see *Meachum v. Fano*, [427 U.S.] at 225. These facts suggest that regulations structuring the authority of prison administrators may warrant treatment, for purposes of creation of entitlements to "liberty," different from statutes and regulations in other areas.

459 U.S. at 470. Despite these "persuasive reasons," however, the *Hewitt* court found that the Pennsylvania statutes and regulations had created a protected liberty interest. *Id.* at 470-71.

We, too, find persuasive reasons to distinguish visitation privileges from parole good-time credits, or even administrative or disciplinary segregation. We recognize, however, that a state may create a liberty interest in freedom from even relatively minor deprivations, see *Hewitt*, 459 U.S. at 470-71. We conclude, therefore, that a state may also create a liberty interest in visitation. We must next consider whether the prison policies at issue in this case created a liberty interest in visitation privileges.

Whether a protected liberty interest has been created depends on whether the inmates have a "legitimate claim of entitlement" to the interest rather than a mere "unilateral expectation." See *Beard v. Livesay*, 798 F.2d 874, 877 (6th Cir. 1986). An entitlement and protected interest exist if "statutes or prison policy statements have limited prison officials' discretion by imposing a specific prerequisite to the forfeiture of benefits. . . ." *Id.* (quoting *Bills v. Henderson*, 631 F.2d at 1292-93). If prison officials have "complete discretion," however, no liberty interest has been created. *Beard*, 798 F.2d at 877 (quoting *Bills*). The Supreme Court used similar language in *Olim v. Wakinekona*, 461 U.S. 238 (1983):

These cases demonstrate that a State creates a protected liberty interest by placing substantive limitations on official discretion. An inmate must show "that particularized standards or criteria guide the State's decisionmakers." *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan, J., concurring). If the decisionmaker is not "required to base its decisions on objective and defined criteria," but instead "can deny the

requested relief for any constitutionally permissible reason or for no reason at all," *ibid.*, the State has not created a constitutionally protected liberty interest. See *id.*, at 466-67 (opinion of the Court); see also *Vitek v. Jones*, 445 U.S. 488-491 (summarizing cases).

Id. at 249. Compare *Olim*, 461 U.S. at 249 (no liberty interest because no standards limited or restricted the officials' determination), and *Meachum v. Fano*, 427 U.S. at 228 (no liberty interest because officials had discretion to transfer prisoner for any reason or for no reason) with *Wolff v. McDonnell*, 418 U.S. at 558 (liberty interest created because state created statutory right to good-time credit which could be withdrawn only for "serious misconduct"). The *Hewitt* Court also made clear that procedural guidelines alone do not establish a liberty interest, but "the repeated use of explicit mandatory language in connection with requiring specific substantive predicates" creates a liberty interest. 459 U.S. at 471-72.

We turn now to the determination of whether the state went beyond the establishment of mere guidelines by using "mandatory language" in connection with "specific substantive predicates," *Hewitt*, 459 U.S. at 472. That is, whether the state, in the words of *Olim*, placed "substantive limitations on official discretion" with "particularized standards." *Olim*, 461 U.S. at 249. For the reasons set out below, we believe the state did do more than just establish guidelines.

"Mandatory" language can be found in the consent order and policy statements at issue here. In the consent order, it is written that "Defendants *shall* continue their open visitation policy." 541 F. Supp. at 37. The policy statement provides further that "An inmate *is* allowed three separate visits per week." (emphasis added). We recognize, however, that while this mandatory language buttresses the argument for finding a protected liberty interest, it may not be sufficient, by itself, to create a protected liberty interest.

In this case, however, each of the three sets of prison policies in effect since the signing of the consent decree placed "substantive limitations on official discretion," *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983), by enumerating "particularized standards or criteria" to constrain the discretion of state decisionmakers. *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan, J., concurring). According to the sets of regulations in effect at the time of the signing of the consent decree, and currently, visitors may be excluded only when "there are reasonable grounds to believe" that a visitor's presence would constitute a "clear and probable danger" to the institution's safety, security, or orderly operation. A nonexhaustive series of examples then follows, cited *supra* in this opinion. Both the "reasonable grounds to believe [a visitor constitutes] a clear and probable danger" and the examples listed that satisfy this criterion are *substantive* determinations that form the basis for official decisions to exclude visitors. *Hewitt*, 459 U.S. at 471-72.

A set of policies also apparently in effect since 1981 states that "certain visitors who are either a threat to the security or order of the institution or nonconducive to the successful re-entry of the inmate to the community may be excluded." A similar nonexhaustive series of six examples follows. Corrections Policies and Procedures No. 403.06. Thus, the consent order and policy statements indicate that prison officials are constrained by substantive limitations and do not enjoy absolute discretion when excluding visitors.

It is well settled that the presence of regulatory language that meaningfully limits the discretion of decisionmakers can create a liberty interest. Such an interest may be created even if the restrictions imposed are largely predictive and are based upon the application of standards of reasonableness. See *Board of Pardons v. Allen*, 107 S. Ct. 2415, 2418-21 & n.10 (1987); *Mayes v. Trammell*, 751 F.2d 175, 178-79 (6th Cir. 1984). We conclude that, given the regulatory and man-

datory language discussed above, a liberty interest was created under the circumstances here.

We must remand this case, however, for a further determination of precisely which set of regulations covers the plaintiff class. The Procedures Memorandum, which we find does create a liberty interest, purports to cover visits at the Kentucky State Reformatory; it is unclear from the record what set of regulations governs visits in other parts of the Kentucky system. We affirm the District Court's holding that the current lack of any kind of hearing does not violate the consent decree. We do not reach, therefore, the issue of whether a consent decree can create a liberty interest enforceable beyond a district court's traditional power to enforce its orders. *Cf. Green v. McKaskle*, 788 F.2d 1116, 1123-24 (5th Cir. 1986).

The decision of the District Court is affirmed in part, as aforesaid, and the case remanded for findings concerning the precise set of prison regulations applicable to plaintiffs and the precise nature of the limitations on official discretion contained in the applicable regulation and for further proceedings respecting the particular procedural process due the plaintiffs when visitation is denied.

WELLFORD, Circuit Judge, concurring:

I concur in the remand with some reluctance because of my reservation about creation of a liberty interest under the Procedures Memorandum. I concur that lack of a hearing in the Kentucky procedures does not violate the consent decree, and would conclude that the consent decree creates no liberty interest "enforceable beyond a district court's traditional power to enforce its orders."

My reluctance about creation of a liberty interest involves the following considerations. Visitation is merely a part of the daily operation of the prison, which affects only the circumstances of the prisoner's situation in prison. By contrast, parole and good-time credit decisions affect a prisoner's release from custody, which fully implicates his "liberty" in the ordinary meaning of the word. Moreover, "[t]he concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution." *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 126 (1977). Decisions concerning visitation privileges, therefore, involve, in my view, even less of an encroachment on a prisoner's remaining "freedoms" while in prison than do decisions concerning his associational rights or placement within the prison. Administrative or disciplinary segregation directly affects the prisoner's "liberty" in that it further restricts his freedom to be in certain areas or associate with certain inmates. The decision to exclude an outside visitor does not affect in the same sense or degree the "freedoms" of association or placement within the prison. Furthermore, excluding a certain visitor but allowing others to visit the prisoner represents a relatively minor "deprivation." I recognize also that a state may create a liberty interest in freedom from even relatively minor deprivations. *See Hewitt v. Helms*, 459 U.S. 460, 470-71 (1983).

Applying these *Hewitt* criteria to the facts of this case presents a very close question for resolution. Prison officials had

established guidelines for denying visits, but mere guidelines to “channel the decisionmaking of prison officials” do not create a liberty interest. *Hewitt*, 459 U.S. at 471. The question is whether the state went beyond mere guidelines by using “mandatory language” in connection with “specific substantive predicates,” *id.* at 472, or, in the words of *Olim v. Wakinekona*, 461 U.S. 238 (1983), placed “substantive limitations on official discretion” with “particularized standards.” *Id.* at 249.

The only “mandatory” language in the consent order or policy statements at issue appears once in the consent order — “Defendants *shall* continue their open visiting policy,” 541 F. Supp. at 37 — and once in the policy statement — “An inmate *is* allowed three separate visits per week.” (Emphasis added). This is considerably less than the “repeated use” of mandatory language in the statute at issue in *Hewitt*. See 459 U.S. at 470 n.6 (“The inmate *shall* be notified . . . [a]n investigation *shall* begin immediately . . . the inmate *must* be released [if] . . . the institutional representative *shall* . . . [s]uch hearing *shall* be held within four (4) days . . .”) (emphasis added).

The degree of discretion left to the Kentucky prison officials in determining which visitors may be denied is not entirely clear. The policy provides that a visitor “may be denied a visit . . . if one or more of the following exists or there are reasonable grounds to believe that” one of the listed reasons exists. The policy also leaves the final decision and considerable discretion to deny a visit, “for the above reasons,” to the Duty Officer.

This policy does not fall neatly into either of the categories outlined by *Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980). The guidelines arguably leave the Duty Officer with broad discretion and do no more than “channel [his] decision-making” along the stated guidelines. See *Hewitt*, 459 U.S. at 471. This policy does not, however, leave the Duty Officer

with “complete discretion” to deny a visit for any reason or for no reason at all. *Cf. Olim*, 461 U.S. at 249; *Bills*, 631 F.2d at 1293.

I doubt that the policy here involved establishes “particularized standards” or “objective and defined criteria” that place sufficient limitation on the officials’ discretion to create a liberty interest. The policy at issue is not as detailed as some of the statutes and policies found to create liberty interests. See, e.g., *Beard v. Livesay*, 798 F.2d 874, 878 (6th Cir. 1986) (describing “very detailed procedures, together with the substantive limitation . . .”); *Franklin v. Aycock*, 795 F.2d 1253, 1260 and 1260 n.5 (6th Cir. 1986) (rather detailed procedures). In this case, a visit can be denied only for listed reasons. In contrast, the procedures in *Wolff v. McDonnell*, 418 U.S. 539 (1974), for reporting and determining whether a prisoner committed “serious misconduct” were rather elaborate, see *id.* at 548-53 and n.8, and the Court decided that procedures were necessary because of the importance of the determination of serious misconduct.

I am mindful that other decisions not heretofore discussed in detail have found liberty interests to exist after consideration of the language involved in the statute or regulation. See *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979); *Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980); *Mayes v. Trammell*, 751 F.2d 175, 178-79 (6th Cir. 1984).

No. 86-5836

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

James M. Thompson, Et Al.,
Plaintiffs-Appellees,

v.

COMMONWEALTH OF KENTUCKY, DEPARTMENT
OF CORRECTIONS, Et Al.,
Defendants-Appellants,

UNITED STATES OF AMERICA,
Amicus Curiae

Before: MERRITT, MARTIN and WELLFORD, Circuit
Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

Filed January 6, 1988

John P. Hehman, Clerk

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH**

JAMES M. THOMPSON, et. al.,
PLAINTIFFS

v.

CIVIL ACTION
NO. 79-0092-P(J)

DAVID H. BLAND, et al.,
DEFENDANTS,

UNITED STATES OF AMERICA
AMICUS CURIAE.

MEMORANDUM

This case is before the court on plaintiffs' motion concerning visitation. Plaintiffs claim that the defendants' suspension of visitation privileges without a hearing violates section 12 of the consent decree as set forth in *Kendrick v. Bland*, 541 F.Supp. 21 (W.D. Ky. 1981), and the due process clause of the 14th Amendment to the United States Constitution.

Specifically plaintiffs claim that defendants do not have procedures for providing a hearing prior to visitation suspensions, for restoring visits, or for review of the decision to suspend. Plaintiffs also claim that the existing procedures which provide for suspension in connection with nine areas of misconduct, are broad, vague and arbitrary. The particular incidents at issue here concern the suspension of certain individuals from visiting prisoners, and not the suspension of prisoners from receiving visits.

EXISTING PROCEDURES

The Corrections Policies and Procedures (No. 403.06) governing general inmate visitation provide for the exclusion of visitors for the following reasons:

- A. The visitor's presence is a clear and probable danger to the security or orderly operation of the institution;
- B. The visitor has a past history of disruptive conduct;
- C. The visitor is under the influence of alcohol or drugs;
- D. The visitor refuses to be searched or to show proper identification;
- E. The visitor is directly related to the inmate's criminal behavior;
- F. The visitor is on probation or parole and has no special permission to visit.

In addition to the above restrictions, Kentucky State Reformatory procedures (KSR 16-00-01(K)(1)(a)) add the following:

- (5) The visit will be detrimental to the inmate's rehabilitation;
- (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden;
- (8) The visitor has previously violated institutional visiting policies;
- (9) The visitor is a former employee of KSR and does not have the prior approval of the Warden.

This court finds that these regulations are not vague or arbitrary and are within the principles set forth in *Bellamy v. Bradley*, 729 F.2d 416 (6th Cir. 1984). This case provides that inmates do not possess a constitutional right to visitation and that prison officials may impose limitations when necessary to ensure the safety of the institution.

CONSENT DECREE

Section 12 of the consent decree provides that visitation should be maintained at "the current level with minimal restrictions." Defendants claim that the present visitation policy is identical to the one in effect at the time of the consent decree, and that they are not in violation of the decree because it did not establish any additional visitation rights. This court finds that the present policy does not violate Section 12 of the consent decree.

DUE PROCESS

Plaintiffs claim that they have a liberty interest in visitation and that defendants' present policies violate due process by failing to include a method of reviewing actions suspending that liberty interest. In *Pugliese v. Belson*, 617 F.2d 916, 922 (2nd Cir. 1980), the court held that a liberty interest may be created by statute, judicial decree or regulation. Plaintiffs state, that since an open visitation policy was judicially established in the consent decree, a liberty interest in visitation was created which should not be curtailed absent due process procedures.

A similar issue was addressed by the United States Supreme Court in *Hewitt v. Helms*, 103 S.Ct. 864 (1983), where the court held that procedures set forth in state statutes and regulations for implementing administrative segregation created a protected liberty interest in remaining in the general prison population. The court stated that the key factor in determining the existence of a liberty interest is whether or not the state's guidelines are mandatory in character, and use language such as "shall", "will", or "must". The court did note, however, that minimal procedures - notice, an informal nonadversary review of the information, and an opportunity by the inmate to be heard - were sufficient to satisfy due process requirements.

Finally, plaintiffs cite *Kozlowski v. Coughlin*, 539 F.Supp. 852 (S.D.N.Y. 1982), in support of their position. That case concerned a New York statute which established that "no inmate shall be deprived of the . . . visiting privileges available to inmates in the general population." *Id.* at 856. The court held that the statute created a liberty interest in receiving visitors, and that some form of hearing concerning revocation was required.

Plaintiffs here claim that since the consent decree provides that "(d)efendants shall continue their open visiting policy," that defendants also must provide a hearing to review revocation of that liberty interest.

In this situation, this court finds no evidence that defendants provide for any type of a review of decisions to revoke or suspend visitation privileges. The language of the consent decree is mandatory in character, within the meaning of *Hewitt v. Helms*, *supra*, in that it require continuation of an open visitation policy. Therefore, the plaintiffs possess a liberty interest in open visitation, and defendants must provide minimal due process procedures when visitation of a prisoner is suspended or revoked. Those procedures should include, and may be patterned after, those as provided in *Hewitt v. Helms*, 103 S.Ct. at 874: an informal, nonadversary review in which a prisoner receives notice of and reasons for the revocation, and an opportunity to respond.

An appropriate order shall accompany this memorandum.

DATED: June 26, 1986

Edward H. Johnstone
Chief Judge
United States District Court

ORDER

In accordance with the memorandum opinion this date entered,

IT IS ORDERED that defendants implement minimal due process procedures as provided in *Hewitt v. Helms*, 103 S.Ct. 864 (1983), with respect to revocation or suspension of plaintiffs' visitation privileges. These procedures should include notice to the inmate of and reasons for the revocation or suspension, and an opportunity for the inmate to be heard.

DATED: June 26, 1986

Edward H. Johnstone
Chief Judge
United States District Court

CORRECTIONS

Policy and Procedures

POLICY NUMBER: 16.1

TOTAL PAGES: 8

DATE ISSUED: August 28, 1981

EFFECTIVE DATE: September 28, 1981

SUBJECT: General Inmate Visiting Procedure

This policy was previously IMD 403 - General Inmate Visiting Procedure.

403.00 INMATE VISITS

403.01 Purpose and Scope

The Kentucky Department of Corrections encourages visits to inmates by family and immediate friends to maintain morale and contact with the community. Relationships with significant others are to be promoted and facilitated by each institution as visits are important to the inmate and his success within the community upon release.

403.02 Visiting Facilities

- A. The Warden or Superintendent shall arrange the visiting areas to be as comfortable as possible for the inmate and visitors but shall at all times provide for adequate supervision and security of the visiting area. If adequate space and funding is available, the Warden or Superintendent shall have a portion of the visiting area equipped and set up to provide activities for the children.
- B. Regular visiting areas should be arranged so that personal contact is permitted but that the entire visiting area, visitors and inmate shall be continuously supervised at all times.
- C. When possible, outdoor visiting areas may be provided but with visiting always inside the security perimeter and under the same degree of supervision as described in A and B in the above.

403.03 Visiting Times

Each Warden or Superintendent shall establish visiting times. At a minimum, the Warden or Superintendent shall permit visiting on Saturday, Sunday and holidays except for emergency conditions. Where space and staff resources permit, the Warden or Superintendent may establish evening and/or daily visiting hours.

403.04 Frequency and Number of Visitors

- A. The Warden or Superintendent must allow each inmate the opportunity to visit a minimum of eight hours per month. Visiting limitations and restrictive length of visits will be only to avoid overcrowding. Individual visitors may be barred for cause as per Paragraph 403.06 below.
- B. The Warden or Superintendent may establish consistent guidelines as to the maximum number of people, the number of visiting hours per month and the number of visits per visitor which an inmate may receive when based on space allocation and staff resources or if it is a threat to security and order of the institution.
- C. Exceptions may be made to any local guidelines, when special circumstances arise, such as distances visitors must travel, frequency of visits for a particular inmate, health problems of inmate or visitor, etc.
- D. Care should be taken to schedule visiting in such a manner that it will interrupt inmate work and programming schedules as little as possible.

403.05 Visitors Allowed

- A. Regular visitors - Regular visitors are defined as being immediate family members, other close relatives and immediate friends over the age of seventeen (17). Under normal conditions, any of the above can visit unless visits could reasonably create a threat to the security and order of the institution.
- B. Persons under age of eighteen (18) - Children under age of eighteen (18) may not visit unless accompanied by a responsible adult who is a member of the child's immediate family or have written parental or guardian permission. Such permission must be fully documented. Children shall be kept under supervision of adult or children's program at all times.
- C. Business Visitors - No inmate is to engage *actively* (operate a business from within the institution) in a business or profession while incarcerated. A special visit may be authorized for business purposes where a decision has to be made that substantially affects the assets or prospects of a business and/or property.
- D. Special Visitors - Attorneys, clergymen, prospective employers, sponsors, parole advisors, volunteers, etc. may visit to assist in legal matters, family problems, release planning, etc. All must visit during regular visiting hours unless a special problem or circumstance exists that requires visiting hours be otherwise. Attorneys and clergymen who desire private or special meetings are required to give twenty-four (24) hour notice.

403.06 Visitors Excluded

Certain visitors who are either a threat to the security or order of the institution or nonconducive to the successful re-entry of the inmate to the community may be excluded. These are, but not restricted to:

- A. The visitor's presence in the institution would constitute a clear and probable danger to the institution's security or interfere with the orderly operation of the institution.
- B. The visitor has a past record of disruptive conduct.
- C. The visitor is under the influence of alcohol or drugs.
- D. The visitor refuses to submit to search, if requested to do so, or show proper identification.
- E. The visitor is directly related to the inmate's criminal behavior.
- F. The visitor is currently on probation or parole and does not have special written permission from both his or her Probation or Parole Officer and the institutional Superintendent.

403.07 Identification

- A. Each visitor except for children under the age of eighteen (18) must show proof of identification.
- B. No visitor may visit more than one inmate unless so authorized by the Warden or Superintendent.

403.08 Inmates in Detention

- A. Inmates in disciplinary segregation may be allowed normal visit times and hours but the visits may be in a restricted setting.
- B. All other inmates in detention should be allowed normal visiting hours but may be restricted to a more secure visiting area if a threat to the security of the institution.
- C. Inmates in detention shall be observed at all times and may be placed in restraints if a threat to the institution, others or himself.

403.09 The Visit

- A. Generally, inmates should be allowed physical contact such as holding hands, etc.. Kissing, embracing, etc., are ordinarily permitted within the bounds of good taste but only at the beginning and end of the visit.
- B. Any sexual stimulation or activity is strictly prohibited.
- C. While in visiting area, inmates are subject to rules and regulations of the Department and the Institution concerning visits.
- D. Inmates may be frisked or strip searched before and after visits, and may be restricted to few or no articles in their possession while in the visiting area (See Internal Management Directive 313. Search)
- E. Children are to be under control at all times and are the responsibility of the accompanying adult.
- F. Staff shall supervise every inmate visit to prevent passage of contraband and to insure the security and order of the institution.
- G. Staff should treat visitors in a courteous and positive manner at all times. Instruction should be given in a firm and positive manner.
- H. Staff should see that visits are conducted in a quiet and orderly manner. Visitors who become disruptive or will not follow visiting guidelines may be requested to leave at any time. Visits may be terminated if visiting guidelines are not adhered to or inmate or visitor becomes disruptive.

403.10 General Visiting Procedures

- A. Each visitor should be identified and required to sign in if over the age of ten (10). Those under the age of eleven (11) should be signed in by accompanying adult.
- B. Staff may require a visitor to submit to personal search as per Internal Management Directive 313 including search of personal property, as a condition of allowing or continuing a visit.

- C. Each visitor eighteen (18) years of age and over shall have access to a copy of the visiting procedures and/or guidelines. Each will be asked if they understand the visiting rules and regulations before beginning a visit.
- D. The visiting room staff may not accept articles or gifts of any kind from inmate or visitor, except packages which have had prior approval from the Warden or Superintendent. The Warden or Superintendent may allow a visitor to leave money with a designated staff member for deposit in inmate trust fund. Visitor and inmate are to receive receipts.
- E. All institutions shall post a copy of Kentucky Revised Statutes 520.050 and 520.060 which prohibits contraband and gives the criminal penalty for such.

403.11 General Dress Code

- A. Each institution may require a dress code for visitor and/or inmate. Such dress code may address the type of clothing as to cover shoulders, midriff, chest area, legs etc.
- B. Dress code should conform as close as possible to accepted dress within the community and should require clothing to be in good taste so as not to offend other visitors and/or inmates.

403.12 Penalty for Violation of Visiting Regulations

Any act or effort to violate the visiting guidelines and/or laws may result in disciplinary action against the inmate, which may include the denial of future visits, possibly over an extended period of time. Moreover, criminal prosecution may be initiated against the visitor, the inmate or both in case of criminal violation.

KENTUCKY STATE REFORMATORY

Procedures Memorandum

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SUBJECT: Visiting Regulations

Visiting Regulations

Statement of Policy and Purpose

Although administrative staff reserves the right to allow or disallow visits, it is the policy of the Kentucky State Reformatory to respect the right of inmates to have visits in the spirit of the Court decisions and the Consent Decree, while insuring the safety and security of the institution. The following are the procedures to be enforced in regard to all types of visits.

Reference

American Correctional Association Standards for Adult Correctional Institutions, 1981, Sections 2-4381, 2-4382, 2-4383, 2-4384, 2-4385, 2-4386
American Correctional Association, Correctional Law Project, Model Correctional Rules and Regulations, 1979
Corrections Policies and Procedures Chapter 16.1, 9.8, 9.6

Procedure

A. Daily Opening and Closing of the Visitation Building

1. The Visiting Room Officer will be responsible for the daily opening and closing of the Visitation Building.
 - a. The Visiting Room Officer will obtain the keys from the Box 12 Officer and will enter through the outside gate, escorting the Visiting Room desk Clerks.

- b. The officer will open the inmate entry/exit doors and proceed to the gate for the fenced walk, unlock the gate, and return to the building.
- c. At the end of normal visitation hours, the officer will search the building to ensure that no inmate remains.
- d. The officer will supervise inmate janitors who will clean the area at the end of visitation hours.
- e. The officer will then strip search the inmate janitors and escort them to the inmate entry/exit gate for admittance to the yard.
- f. The officer will lock the inmate entry/exit gate, return to the building, and secure the inmate entry/exit doors.
- g. All Visiting Room staff will exit the building. After securing the entry doors, the Visiting Room Officer will return the keys to the Box 12 Officer for reissue on the next working day or for night visits on appropriate evenings.
- h. The officer will then escort the Visiting Room staff to the Chief Clerk's Office.

Visiting Building Visits

1. Visits will be conducted seven (7) days a week. Visitors will be allowed to enter the institution beginning at 8:30 AM and will continue to be admitted into the institution until 2:30 PM. By 3:00 PM all visitors will be off institutional grounds.
 - a. Inmates assigned to the A & C Unit will be allowed only inside visits which will take place on weekends and holidays due to testing and classification processes that are conducted in the A & C Unit.

- b. Inmates whose job assignments are SU (Quit) or inmates housed in Segregation and Administrative Segregation shall be allowed only inside visits on days other than weekends and holidays.
 - (1) When an inmate is assigned to either Segregation or Administrative Segregation, he shall be allowed one (1) telephone call to notify his family of his change of status, thus effecting a change in his visiting days.
 - (2) Exceptions to the restriction of visiting days for the above inmates may be authorized by the Asst. Warden for Security prior to the visitor(s) arrival at the institution, or in emergency situations, by the Shift Supervisor or Duty Officer at the time of the arrival of the visitor(s) at the institution.
- 2. There will be no visit list maintained which specifies who may visit an inmate. However, the Visiting Desk will keep a list of persons who have visited an inmate. The list is private information and unavailable to visitors. No visitor will be refused the opportunity of a regular Visitation Building visit unless they fall under the criteria of SECTION J. of this procedure.
- 3. An inmate is allowed three (3) separate visits in the Visiting Building per week (Sunday through Saturday).
- 4. An inmate is allowed to have a maximum of three (3) adult visitors (adult being defined as over 18 years of age) per visit. There will be no limit on the number of children allowed per visit, but they must remain under the supervision of an adult visitor who will prevent any major disturbances by children in the Visiting Building. If disruption persists, the visit will be terminated. This will be at the discretion of the Visiting Building Officer. No visitors under the age of 18 will be allowed to visit without being accompanied by an adult, unless the visitor is married to the inmate and can provide a copy of the marriage license.

- 5. Visits will be one and one-half (1½) hours in length on normal working days (Monday through Friday). Visits on Saturday, Sunday and holidays will be one (1) hour in length. In the event of a large volume of visitors, the Shift Supervisor has the authority to decrease the amount of time a visit will last. This shall be documented and distributed to all areas of concern (Warden, Deputy Warden/Operations, Asst. Warden/Security, Senior Captain, Captains Office File, Duty Officer).
- 6. All visitors are subject to a frisk search and a strip search upon entrance to the Reformatory grounds. It will be at the discretion of the Warden, the Deputy Warden/Operations, Asst. Warden/Security, or the Duty Officer to determine if a strip search is justified. If it is deemed necessary, the visitor will be asked to submit to a strip search.
 - a. If a visitor is to be strip searched, he/she will be asked to sit in the waiting room, but will not be given a reason.
 - b. If the visitor agrees to the strip search, he/she will be escorted to the search room adjacent to the Visiting Desk and strip searched by two (2) Reformatory employees of the same sex as the visitor.
 - c. Prior to any strip search of a visitor, the visitor shall be requested to consent to the search by signing the appropriate search consent form (adult or child). See Attachments I and II.
 - d. The Visiting Desk Clerk will contact the Captains Office for assistance.
 - (1) Should a body cavity search be required, the search will be conducted in the institutional hospital by institutional medical staff.

- (a) If no contraband is found, the visitor will be allowed to visit and an incident report will be made by the staff involved in the incident.
 - (2) If contraband is found, the individual will be detained until the Kentucky State Police are notified and arrive at the institution to take charge of the subject.
 - (3) The chain of evidence will be closely kept at all times.
 - (4) The visitor will be restricted from visiting any inmate in the future. See SECTION J.
 - (5) An Extraordinary Occurrence Report will be prepared by the Captains Office Clerk and initialed by staff involved in accordance with KSR 01-00-14.
- e. If the visitor refuses to be strip searched, the following steps will be required.
- (1) Kentucky State Police will be notified of the situation.
 - (2) The visitor will be detained until the Kentucky State Police arrive at the institution.
 - (3) On authorization from the Kentucky State Police, a strip search will be performed by two (2) Reformatory employees of the same sex as the visitor.
 - (4) If the Kentucky State Police do not give authorization for the strip search, the visitor will be escorted to the visitor's parking lot and allowed to leave the institution without visiting the inmate. The visitor will be restricted from visiting any inmate at the institution in the future. See SECTION J.

- (5) Minimal force will be used at all times when performing a forced strip search.
 - (6) If no contraband is found during the search, the visitor will be allowed to go on the visit and an incident report shall be made by the staff involved.
 - (7) If contraband is found during the search, the individual will be turned over to the Kentucky State Police for criminal prosecution.
 - (8) The chain of evidence will be closely kept at all times.
 - (9) An Extraordinary Occurrence Report will be completed by the Captains Office Clerk and initial by staff involved.
 - (10) The visitor will be restricted from visiting in the future.
7. A list of persons restricted from the institution shall be posted at the Visiting Desk. Individual visiting cards shall specify persons restricted from visiting individual inmates. The master log will be furnished to all institutions and updated as required.
8. Visitors will follow the steps listed below to visit an inmate in the Visiting Building.
- a. After parking in the visitor's parking lot, proceed to Box I where an officer will check pocket contents. No purses or briefcases will be allowed, unless it is an attorney visit.
 - (1) A sign will be posted listing items which are by statute considered to be dangerous contraband or contraband. Visitors are prohibited from entering the institution with such items and may be subject to prosecution (See CPP 9.6).

- b. Proceed to the Visitation Building gate where the officer will again check the visitor's pockets and stamp the right hand of all visitors for identification purposes.
- c. Proceed to Visitation Building and register at the desk showing picture I.D.
 - (1) All visitors 18 years of age and older who enter the Visiting Room or Lawn Visit Area will be required to possess a picture identification card and that picture identification card will be surrendered to a staff member in the Visiting Building or in the Lawn Visit Area. The picture I.D. will remain in possession of that staff member until the completion of the visit, when it will be used as a means of positive identification for release of the visitor.
 - (2) Any exceptions to the picture I.D. must be approved by the Senior Visiting Desk Clerk and documented (see SECTION K).
 - (3) Immediate family members may be allowed on (1) visit without picture I.D. This visit will be a non-contact visit in a security booth.
- d. When the visitors approach the Visiting Desk and inform the clerks whom they wish to visit, a Visiting Desk Clerk will document the visit in the Notification Log of Inmate Visits, entering the inmate's name, number, dormitory, time the visit was registered, and the time the dormitory was notified.
 - (1) A Visiting Desk Clerk will notify the appropriate dormitory to page the appropriate inmate for the visit.
 - (2) If, after a reasonable lapse of time (30 minutes), it becomes necessary to recall the dormitory about the visit, the time of that call will also be logged.

- (3) If the visit is cancelled for any reason by visitors or inmates, this will also be noted in the log.
 - e. When the visit is announced, a Visiting Desk Clerk will give the visitor directions to enter and electronically unlock the entry/exit doors, opening only one door at a time and admitting only authorized visitors. If the visiting room is crowded, the clerk or Visiting Room Officer may assign a specific table for each visit.
9. Inmates will enter the Visiting Building via the gate and fenced walkway located at the end of the Segregation 3 & 4 Building.
- a. Inmates will not attempt entry unless paged for a visit. Inmate identification will be checked by the Visiting Room Officer and the inmate must possess a signed yard pass from a dormitory officer or work supervisor.
 - b. When an inmate enters the Visiting Building, the only items allowed in his possession are a comb, ID card, room key, pass, and locker key. None of the following items will be allowed in the Visiting Room:
 - (1) Cigarettes
 - (2) Matches
 - (3) Any jewelry other than watch, ring, necklace, religious medallion
 - (4) Prohibited clothing (coats, vests, walking shorts, sweat pants, hats)
 - c. Following a frisk search, inmates will be seated at a table and the officer will go to the lobby and announce the visit. The officer will collect the picture I.D. from visitors as they enter the Visiting Room.

- (1) Inmates are not permitted to leave the table without the approval of the officer.
- d. Visitors will be allowed to make purchases from the vending machines in the Visiting Room.
10. Inmates must wear clean and presentable clothing.
 - a. Shirt with sleeves
 - b. Full length trousers
 - c. Socks
 - d. Shoes
11. Plaited and/or braided hair will be allowed on visits. Hair may be subject to a search for contraband at the discretion of the officer in charge of the visiting area.
12. The inmate and his visitor will be allowed a brief kiss and a brief embrace at the onset and finish of the visit. Hand holding will be allowed during the visit, but no other overly demonstrative displays of affection. *Excessive contact* shall be determined by the Visiting Room (with respect for other visitors) and may result in the visit being terminated.
13. The visitor shall give nothing to the inmate with the exception of a money receipt. Any other item will be confiscated and a disciplinary report filed with the Captains Office.
14. Visitors are allowed access to the restroom facilities located in the lobby, but are encouraged to use the restroom prior to entering the Visiting Room. During less crowded visiting periods, the officer may allow visitors to exit the Visiting Room for the purpose of using the restroom facilities and visitors will be allowed to re-enter the Visiting Room to continue the visit for the remainder of time.

- a. Visitors must pick up their picture I.D. before leaving the Visiting Room to use the facilities, and must give it back to the officer as they re-enter.
- b. Children must be accompanied by an adult visitor when leaving the Visiting Room to use the restroom. No children will be allowed to remain in the Visiting Room without an adult visitor to supervise them.
- c. Visitors may not re-enter the Visiting Room for any other purpose than stated above without having their visit terminated.
- d. The Visiting Room Officer will have the discretion to deny restroom privileges during extremely overcrowded visiting periods.
- e. Inmates are allowed to utilize the restroom in the Visiting Room. *Under no circumstances shall inmate and visitors be allowed to utilize the same facilities.*
15. Visitors will not be permitted to re-register to visit the same inmate on the same day.
16. At the completion of the visit, the inmate will be strip searched in the designated area of the Visiting Room. The search shall be thorough and exhaustive in order to reduce the potential of contraband being brought into the institution.
 - a. There shall be no contact with any inmate outside the Visiting Room prior to the visited inmate being strip searched.
 - b. There shall be no contact with another inmate in the Visiting Room after the completion of the strip search.
17. Inmates will exit the Visiting Building via the fenced walkway and gate.

C. Lawn Visits

1. The Lawn Visiting Program is a special incentive program designed for use by the Honor Dormitory inmates, Honor Dormitory waiting list inmates, Honor Status Unit D (A-B-C-D Wing) inmates, and inmates assigned to the Firehouse. This special program is in addition to the regular visiting program. Following are guidelines which apply.
2. Lawn visits will be held on Saturday, Sunday and holidays (weather permitting). The Shift Supervisor will determine if the weather is unacceptable for lawn visits. Since the visiting area is under cover, this area may be used for visits even though rainy conditions exist. However, the area may be closed in the event of a sudden thunderstorm, accompanied by wind and/or lightning that would jeopardize the safety of the officers, visitors and inmates.
3. The visiting area adjacent to Unit C will be used for lawn visits. Only inmates from Honor Dorms or on a waiting list for these dorms, those eligible Unit D (A-B-C-D Wing) inmates, and inmates assigned to the Firehouse may receive lawn visits.
 - a. Unit D (A-B-C-D Wing) residents have the opportunity to transfer to Honor Dorms as bed space becomes available. These individuals will be screened by the Unit Manager and be evaluated by Medical personnel. If, after meeting all requirements for transfer to an Honor Dorm, a Unit D (A-B-C-D Wing) resident refuses to transfer and chooses to remain in the A-B-C-D Wing housing unit, he will not be permitted honor lawn visits. However, if he is judged medically unable to transfer and is otherwise eligible for Honor Dorm housing, lawn visits will be permitted.

4. Inmates will be allowed only one (1) lawn visit per week, either on Saturday, Sunday or holidays, and this lawn visit is in addition to the regular weekly visits allowed that particular inmate. Any additional visits received on the weekend or holiday in that week will be held in the regular Visiting Room. If the inmate expects more than one visit on a weekend, it is the inmate's responsibility to notify the particular visitor who is to ask for the lawn visit.
5. Lawn visits will be limited to the following visitors:
 - a. Parents, wife, designated girlfriend, children, brothers, sisters, grandparents, mother-in-law, father-in-law, approved volunteers (Volunteers in Corrections), and the spouses of the relatives listed above.
 - b. There will be an established visiting list for lawn visits. Each inmate's visiting list is confidential and is available only to appropriate staff or the individual inmate.
 - c. Any change in the visiting list must be handled through the inmate's casemanager. Changes may not be made more often than every 30 days. Only visitors on the visiting list with proper identification (picture I.D.) shall be permitted on a lawn visit.
 - d. Honor Status Unit D (A-B-C-D Wing) and Honor Dorm waiting list resident visiting cards will be marked with an *H* in order to be distinguished from other resident visiting cards.
 - e. Each Honor Dorm shall forward a copy of their updated waiting list to the Visiting Desk on Friday each week. *Only inmates with 120 days clear conduct* will be included in this list.

6. There will be a maximum of four (4) adult visitors (adult defined as over 18 years of age) per lawn visit. There will be no restriction on the number of children; however, children must be supervised by the adult visitors. Failure to adequately supervise the children can result in termination of the lawn visit. No visitor under the age of 18 shall be admitted unless accompanied by an adult or married to the inmate and can provide a copy of the marriage license.
7. The same restrictions involving clothing and items in pockets as is described in SECTION B. - Visiting Building Visits - will apply to lawn visits, except that:
 - a. When an inmate enters the Lawn Visiting Area, the only items allowed in his possession are a comb, I.D. card, pass, locker or room key, cigarettes, matches, and any soft drinks purchased from the Canteen.
 - b. Inmates may wear 1 watch, 1 ring, 1 necklace, and 1 religious medallion.
 - c. No wallets, books, pictures, or cards will be allowed.
 - d. After being seated at one of the picnic tables provided, the inmate may not straddle the bench on the table. Both feet must be on the same side of the bench.
 - e. The visitor shall be permitted to bring table cloths, but it is the responsibility of the inmate to see that the cloth remains completely on the top of the table at all times. No more than one (1) inch of cloth may hang over the edge of the table on all four sides.
 - f. When pictures of inmates and visitors are taken by a designated club or group, no excessive or obscene contact of any kind is allowed.
 - g. No profane, vulgar, or sexually suggestive language by inmates or visitors will be permitted.

- h. Hemmed walking shorts (no shorter than mid-thigh) will be allowed on lawn visits. No sweatpants are permitted.
 - i. Cigarettes and matches will be allowed to be brought from the main compound to the lawn visiting area by inmates. However, cigarettes and matches must be used while on the lawn visit or discarded at the completion of the visit, as they will not be allowed to be brought back to the main compound from the lawn visiting area.
 - j. During inclement weather, inmates will be permitted to wear jackets or coats on lawn visits. The Lawn Visiting Officer will make the determination if the weather warrants the wearing of jackets or coats. At no time, will jackets or coats be allowed during normal weather conditions.
8. The hours for admitting lawn visitors are from 8:30 AM to 2:30 PM. All visitors must be off institutional grounds by 3:00 PM.
 - a. Visits may last for any length of time during these hours, depending on the number of visitors and available space. The length of the visits will be determined by the Shift Supervisor based on crowded conditions.
 - b. If visits are terminated by the Shift Supervisor prior to two (2) hours of visiting time due to crowded conditions, this shall be documented. The officer assigned to this area will document the time each visit begins on the form provided.
9. Visitors may bring picnic-type food items to a lawn visit. The following limitations will apply:
 - a. No metal utensils, plastic only. These are to be removed by the visitor at the completion of the visit.

- b. All food will be in plastic or cardboard containers.
 - c. No screw top containers are allowed in the area.
 - d. Styrofoam ice chests only are permitted. No ice chests made of other materials will be permitted beyond Box I.
 - e. No beverages, liquids or fruits of any type are to be brought into the institution. A water fountain is available. Inmates will be allowed to purchase soft drinks at the Canteen and bring them into the lawn visiting area, or visitors may purchase soft drinks from available machines.
 - f. Food brought into the visiting area will be either consumed or removed by the visitors when they leave. No food will be taken back into the institution by inmates. Inmates have the responsibility of policing the immediate area upon the completion of their individual visit. Trash cans will be located in the visiting area.
10. Visitors will proceed as follows to the Lawn Visit area:
- a. Stop at Box I where pocket contents and any food items will be checked for contraband.
 - b. After inspection of pocket contents and food items, proceed to the Visitation Building Gate. The Officer at the gate will check pocket contents and food items again.
 - c. Enter the Visitation Building and register at the desk where comparison will be made of visitor(s) I.D. and visiting list.
 - (1) The staff at the Visiting Desk will fill out the visiting slip and notify the resident's dormitory of the pending visit. The number of visitors will be recorded on the visiting slip.

The Captains Office will be called if the dormitory phone is busy. The time of the call will be logged on the visit notification log.

- (2) The date of the visit is to be recorded on the visiting card and the date circled to signify a lawn visit.
 - (3) The visitors, upon arrival at the Unit D Lawn Area Gate, will present the visiting slip to the officer who will allow the visitors admission into the area after determining that the number of visitors corresponds with the number recorded on the visiting slip. The visiting slip will remain in the possession of the Unit D Officer.
 - (4) The Unit D Officer will then proceed with the visitors to Visiting Gate 2 (the gate entering the Honor Status visiting area). Upon arrival at the gate, the officer stationed inside the Honor Status visiting area will admit the visitors into the visiting area and give a brief explanation of visiting rules.
11. After being notified of the visit by the Visiting Desk or the Captains Office, the inmate will proceed to the gate between Dormitory 8 and 9 with proper identification in order to be admitted to the visiting area.
- a. No inmate will be admitted into the visiting area until after his visitors have arrived in the visiting area.
12. Proper behavior will be required and expected between the inmate and his visitors.
- a. Excessive physical contact to the extent that it attracts the attention of other visitors will not be tolerated. In the event of such action, the visit will be terminated and a disciplinary report filed on the

inmate. The Adjustment Committee can restrict the inmate from having lawn visits for a specified amount of time.

- b. No inmate or visitor will be permitted to approach the side of Dormitory 8 or 9 which faces the Honor Status visiting area or make verbal or physical contact with any inmate in that area.
 - c. Residents will not be allowed to approach the gate entering the Unit D lawn area at any time. A line has been placed on the sidewalk near the gate. No resident will be permitted to pass beyond this point at any time.
13. In the event it is necessary to close the visiting area because of weather conditions after visits have started, the inmate may continue the visit in the regular Visiting Room if the inmate's visit has lasted less than one (1) hour at the time the area is closed. In this case, the inmate's visitors will come back to the Visiting Desk for clearance to continue the visit for the same length of time that is being allowed in the regular Visiting Room on that particular day. This will not count as one of the inmate's three (3) inside visits. No food may be brought into the Visiting Room.
14. The inmate will not be allowed to take anything back to the main compound from a lawn visit that he did not bring with him, with the exception of a money receipt or pictures which have been taken during the lawn visit by an authorized institutional club. Visitors are not permitted to bring in any type of camera.
15. At the completion of the lawn visit, the visitors will exit through Visiting Gate 2. The inmate will be strip searched in the building provided for that purpose in the lawn visiting area. Inmates will remain at least ten (10) yards from the building until directed by an officer to enter the building. Inmate will not have:

- a. Any contact with inmates on the main compound before the strip search; and
- b. Any contact with inmate on lawn visits after the search has been performed.

General Population Outdoor Visits

1. During fair weather, general population inmates who reside in non-honor Dormitories and the Geriatrics Unit will be permitted outdoor visits in the Honor Status lawn visiting area, utilizing the following guidelines.
- a. Outdoor visits will be permitted on Thursdays and Fridays from 9:00 AM through 11:00 AM.
 - b. Each inmate will be allowed one (1) outdoor visit per week, which will count as one of his three permitted Visiting Room visits.
 - c. An inmate may not receive an outdoor visit unless he has been at this institution a minimum of 90 days. Inmates transferred from other institutions to the Reformatory will be allowed outdoor visits once they are assigned to the main compound, providing they have maintained clear conduct for a period of 90 days at the institution from which they were transferred (i.e., no disciplinary action greater than a warning or extra duty).
 - d. No picnic lunches or food will be permitted during general population outdoor visits.
 - e. Outdoor visits will be limited to the following visitors: parents, wife, designated girl friend, children, brothers, sisters, grandparents, and approved volunteers (Volunteers in Corrections).
 - f. Other general rules and policies that pertain to Honor Status lawn visits also apply to outdoor visits with the above noted exceptions (see SECTION C).

E. Night Visits

1. Night visits are a privilege, and as such, do not count as one of the three (3) visiting room visits allowed per week. However, a maximum of twenty-four (24) inmates per night will be allowed night visits.
 - a. Inmates living in Honor Dorms, inmates on an Honor Dorm waiting list, Firehouse inmates, or Honor Status Geriatric residents are allowed two (2) night visits per month.
 - b. Inmates from other living units are allowed one (1) night visit per month unless otherwise noted in this procedure.
2. Inmates must have been assigned to this institution a minimum of 90 days and have a minimum of 90 days clear conduct to qualify for night visits. Inmates must be working or be in an approved program. Warnings or disciplinary reports shall not infringe on night visit privileges.
3. Only visitors described in Section C, Item 5 and Section D, Item 1.e of this procedure shall be allowed on night visits. It will be the responsibility of the Case Manager to verify the visitors' name on the Night Visit Request Form as being eligible for a night visit.
4. To apply for a night visit, the inmate must obtain a Night Visit Request Form from his Case Manager and fill it out completely. The inmate will return it to his Case Manager, who will forward the request for approval to the administrative staff member in charge of night visits. After the administrative staff member has reviewed the request, he will approve or disapprove it and return the visitors pass section of the form to the inmate by institutional mail. The inmate will then mail the approved visitors pass section to this approved visitors. Under no circumstances will the inmate be permitted to

pass this form to his visitors on a regular visit. The visitor will be required to have this pass with them when they arrive for a night visit.

5. Each request form is valid only for the date indicated on the form. The request form should be submitted to the Case manager at least two (2) weeks prior to the date of the requested visit. (Night Visit Request Form is attached to this procedure - see Attachment 3).
6. Night visits will have a maximum of three (3) adult visitors (adult being defined as over 18 years of age). There is no limit to the number of children on a night visit, however, they must be supervised by the adults.
7. Because the Chief Clerks Office is closed during the time of night visits, no money may be left on inmate accounts.
8. The administrative staff member in charge of night visits will supply the 4:00 PM to 12:00 midnight Shift Supervisor with the institutional section of the Night Visit Request Form at the beginning of the shift during which the visit will occur.
 - a. Night visits will be held only on Monday, Wednesday, and Friday unless these days fall on a holiday; then the night visits will be suspended.
9. When night visitors arrive at the institution, they will follow these steps for admittance:
 - a. Night visitors must be at Box 1 not later than 6:30 PM nor before 6:30 PM.
 - b. Visitors will present the night visitors pass to the Box 1 Officer who will check visitors pocket contents and any food items for contraband.
 - c. The Night Visit Officer will process the authorized night visitors and escort them as a group to the

visitation gate where the Outside Patrol Officer will be waiting to admit them to the visiting area.

- (1) The Outside Patrol Office will obtain the keys from Box 12, admit the visitors to the area, and return the keys to Box 12.
- d. The Night Visit Officer will place an identification stamp on the right hand of all visitors and will direct them to enter the building where the visit will be verified.
- e. Inmate scheduled for an approved night visit must be in the Visiting Room at 5:45 PM where they will be counted by the officer there for the 6:00 PM count. Should it be determined that a night visit will not take place, the inmate shall return to his housing unit after the 6:00 PM count clears.
- f. Night visits will end promptly at 8:30 PM.
- g. At 8:30 PM, the Outside Patrol Officer will obtain the keys from Box 12 and allow the visitors to exit.
- h. The Night Visit Officer will escort the visitors as a group from the building and direct them to Box 1. As the visitors leave the building, they will be counted to assure the same number of visitors are exiting as had entered for night visiting.
- i. The Visiting Building will be secured for the day and the keys returned to Box 12 by the Outside Patrol Officer.
- j. Inmates may not take items back to the main compound that they received on a night visit nor will visitors carry anything out that the inmate has given them.
- k. Inmates will leave the Visitation Building and will be

searched in accordance with the same procedures used on regular visits.

10. Food items will be allowed on night visits and will follow the same guidelines described in SECTION C, Item 9 - Lawn Visits - Food item limitations.
11. All visitors will be subject to search as described earlier in this procedure.
12. Excessive physical contact between inmates and visitors will not be tolerated. Failure to abide by appropriate behavioral standards will result in the termination of the visit and disciplinary action for the inmate.

F. Legal Visits

1. When an inmate gets a visit from his attorney, he will follow the same procedures as for a visit in the Visiting room, except that he will be allowed to visit in the Attorney/Client conference room without supervision.
 - a. No legal papers may be brought into the visiting room by the inmate without prior approval from the Captains Office.
 - b. No legal papers will be left by the attorney for the inmate. These papers will have to be mailed to him.

G. Clergy Visits

1. When a member of the clergy visits an inmate, he will follow the same procedure as for a visit in the Visiting Room and will use the private room designated for clergy. In all cases, the inmate will be strip searched at the completion of a clergy visit.

H. Safekeeper and Other Non-Contact Visits

1. Visitors will observe the same procedure as for Visiting Room visits; however, they will use the non-contact booth.

2. Visits will last a maximum of one (1) hours.
3. Inmates will be strip searched at the end of the visit.

I. Hospital Patient Visits

1. The same visiting privileges afforded to the inmates' previous housing assignment will apply during hospitalization. Inmates who are admitted directly from the I.D. Department will follow the visiting privileges for the Assessment & Classification Center.
2. All visits will be in the visiting room. No visits will be allowed on the hospital floor unless prior approval is given by the Medical Director or in his absence, the Health Service Administrator and/or Nurse Service Administrator.
3. Ambulatory patients will go to the visiting room by way of the yard.
 - a. The Hospital Correctional Officer will notify the Visiting Room Correctional Officer when the inmate leaves the floor. The Visiting Room Officer will notify the Hospital Officer when the inmate leaves the visiting room.
 - b. Inmates will be instructed that they are not allowed to go any other place while going to and returning from the visiting room. If instructions are not followed, disciplinary action will be taken.
 - c. Wheelchair patients will go through Unit D to the visiting room.

J. Leaving Money on Inmate Account

1. Depositing of money on an inmate's account by visitors will be allowed only on inside or lawn visits during the 8:00 AM TO 4:00 PM shift.

2. Deposits may be made only for the inmate who is being visited and must be done at the time the visitor registers to visit.

- a. Prior to the opening of the building at 8:30 AM for visits, a Visitation Building clerk will receive an adequate amount of cash from the Chief Clerks Office for that day's transactions.
- b. At the end of the visiting day (by 3:30 PM) a Visitation Building clerk will turn in all cash receipts, and other cash to the Chief Clerks Office. At that time, the cash receipts will be verified and the next day's cash will be prepared for pick up.

3. There is no limit to the amount of money that a visitor may leave on an inmates' account.

K. Visitor Refused Admittance

1. A visitor may be denied a visit at any time if one or more of the following exists or there are reasonable grounds to believe that:
 - a. The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including, but no limited to:
 - (1) The visitor has a past record of disruptive conduct.
 - (2) The visitor is under the influence of alcohol or drugs.
 - (3) The visitor refuses to submit to search or show proper identification upon request.
 - (4) The visitor is directly related to the inmate's criminal behavior.

- (5) The visit will be detrimental to the inmate's rehabilitation.
 - (6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.
 - (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden.
 - (8) The visitor has previously violated institutional visiting policies.
 - (9) Former employees of the Kentucky State Reformatory will not be allowed to visit inmates unless they have authorization from the Warden prior to the time of the visit.
2. A master log will be kept at the Visiting Desk of all visitors who have been denied a visit for any of the reasons listed above. A visitor who is denied a visit will not be allowed to visit an inmate for up to six (6) months following the incident. Persons who bring dangerous drugs or contraband into the institution may be denied visits indefinitely, until permission is granted by the Warden. The Duty Officer has the responsibility of denying a visit for the above reasons.
 - a. The master log will be furnished to all institutions and updated as required.
 3. Any time a staff member feels a visitor should not be allowed admittance for any of the reasons above, the Shift Supervisor and the Duty Officer shall be notified. The final decision will be with the Duty Officer. All decisions will be documented. If it is felt that the individual presents a serious threat of danger to himself or others the Kentucky State Police will be advised of the situation so they may make a decision on whether their intervention is needed.

- a. In the event a visitor is refused admittance, they are to return to the visitors parking lot. They are not permitted to remain in the lobby as this space is reserved for those visitors waiting for their visit to be announced.

L. Visitor Identification

1. A visitor shall present identification at the time of registration for a visit. Valid identification is a drivers license, county I.D. or an equivalent piece of identification with a picture of the visitor permanently affixed to it.
 - a. Any exception to the picture I.D. must be approved by the Senior Visiting Desk Clerk and documented. The Senior Visiting Desk Clerk will perform these duties for the Visiting Room and Lawn Visits.
 1. Immediate family members will be allowed one (1) visit without a picture I.D. This visit will be a non-contact visit in the security booth.
 - b. Only visitors with a picture I.D. will be allowed to visit on night visits.
 - c. Any exception to the picture I.D. on night visits must be approved by the Night Visit Officer and will be documented.
2. Officers at Box 1 and the Visiting Gate who have a question about a visitor may ask to examine the visitor's identification.

M. Packages on Visits

1. No packages will be brought into the institution on any visits. Packages must be sent by mail only. See KSR 17-00-07 - Inmate Personal Property - for specific guidelines for packages received by mail or UPS.

N. Visitors Traveling Long Distances

1. In instances where visitors have traveled long distances to visit an inmate, allowances may be made for an extended visit or extra visits beyond the inmate's weekly limit. This is for inside visiting room visits only. The decision to allow an extended or extra visit is dependent on:
 - a. The volume of visits for that day.
 - b. The visitors must request an extended or extra visit at the onset of the visit or be approved by the Assistant Warden for Security prior to the date of the visit.
 - c. The inmate's behavior.
 - d. The visitor has traveled more than 150 miles.
2. The decision will be made by the Shift Supervisor whether or not to grant an extended visit, unless it has been previously approved by the Assistant Warden for Security.

O. Visitor Dress and Behavior Guidelines

1. No visitors (children and adults) will be admitted if barefooted. Footwear must be worn once the visitor is beyond Box 1.
2. Visitors must be dressed in a manner that will not distract, disturb, or be offensive to other visitors, inmates, or staff in the visiting areas. If there is any question concerning a visitor's clothing, the Shift Supervisor will be notified to make a determination whether or not the visitor will be allowed in the institution.
3. Visitors will use waste containers and ash trays in the visitor's waiting room.

4. No profane, vulgar or sexually suggestive talk will be allowed during a visit.
5. Visitors and inmates will act in a dignified, responsible manner while on a visit. Visitors and inmates who do not act in such a manner will have their visit terminated on the approval of the Shift Supervisor. Inmates who do not act in the manner described above will have a disciplinary report filed on them. Visitors who do not act in the manner described may be restricted from visiting privileges at the discretion of the Assistant Warden for Security.
6. Visitors are to abide by all rules and regulations of the institution. Failure to abide will result in their visit being terminated.

P. Legal Papers Brought In On Visit - (Non-Attorney Visits)

1. Legal papers may be brought in on a visit if they meet the following criteria:
 - a. Legal papers are to be signed by the inmate being visited or reviewed by him.
 - b. Legal papers will not be permitted to remain with the inmate at the completion of the visit. Visitors must take the legal papers with them when they leave.
 - c. The volume of legal papers will be such that they can easily be searched and will not interfere with or distract from any other visits that are taking place.
 - d. Any questions on legal papers shall be directed to the Shift Supervisor to make a determination if they will be allowed in on a visit.

Q. Special Requests

1. An inmate who has a unique problem in complying with the criteria in this procedure may contact his Case Manager and request that consideration be given to aid him with his particular problem.

a. If the Case Manager believes the request is reasonable, considering the circumstances, he/she will prepare a memorandum to the Assistant Warden for Security, detailing the request and the reasons for it. The Assistant Warden for Security may:

(1) **Deny the request.** When this is done, he shall return the request to the Case Manager who will notify the inmate involved of the denial of the request.

(2) **Approve the request.** When this is done, the Assistant Warden for Security shall approve the memorandum. The memorandum shall be returned to the Case Manager who will then notify the inmate.

ACTION All staff members will comply with this procedure upon its issuance. Any exception to this procedure must be authorized by the Assistant Warden for security or when he is not available, the Duty Officer.

John D. Rees, Warden
Kentucky State Reformatory

Attachment 1: Adult Search Consent Form
Attachment 2: Children Search Consent Form
Attachment 3: Night Visit Request Form

CC:1023
(8/83)

KSR 16-00-01
Attachment I

KENTUCKY CORRECTIONS CABINET

ADULT SEARCH CONSENT FORM

I am _____. I am over 18 years of age. I understand that I have been asked to allow a search of my person which will involve the removal of my clothing and/or a search of certain body cavities by medical personnel. I understand that this is a purely voluntary procedure. I understand that my refusal to permit this search may result in a permanent denial of my privilege of visiting anyone in this institution. I understand that this search will be conducted by trained, certified medical personnel, if it involves a body cavity search, and that in no case will I be touched during the search by anyone except medical personnel.

Understanding all these facts, I give my permission for the search as evidenced by my signature this _____ day of _____, 19 _____.

Signature

Witness

CC-1024
(8/83)

KENTUCKY CORRECTIONS CABINET
CHILDREN SEARCH CONSENT FORM

I am _____ . I am the parent or guardian for _____ who is a minor under the age of 18. I understand that I have been asked to allow a search of his/her person which will involve the removal of his/her clothing and/or a search of certain body cavities by medical personnel. I understand that this is purely a voluntary procedure. I understand that my refusal to permit this search may result in a permanent denial of my privilege of his/her privilege of visiting anyone in this institution. I understand that this search will be conducted by trained, certified medical personnel, if it involves a body cavity search and that in no case will he/she be touched during the search by anyone except medical personnel.

Understanding all of these facts, I give my permission for this search as evidenced by my signature this _____ day of _____, 19 _____.

Signature

Witness

NIGHT VISITS REQUEST FORM
KSR 16-00-01 - Attach. 3

Residents must fill out both sections of this form and return it to their caseworker at least *two weeks* before the date requested for your visit. You must be a resident at KSR for 90 days and have clear conduct for 90 days. Only immediate family members (or other specially approved visitors) will be permitted to attend this program. You may have up to 3 adults. There is no limit to the number of children under 18 yrs. old who will be permitted.

NAME: _____ NUMBER: _____
DORM: _____ DATE: _____

VISITOR NAME: _____ ST. ADDRESS: _____

1. _____
2. _____
3. _____

CITY: _____ STATE: _____ RELATIONSHIP: _____

1. _____
2. _____
3. _____

NUMBER OF CHILDREN UNDER 18 YRS. OF AGE EXPECTED: _____

DATE VISIT IS REQUESTED:
MONTH _____ DAY _____ YEAR _____

.....

KENTUCKY STATE REFORMATORY
VISITORS PASS - NIGHT VISIT PROGRAM

RESIDENT NAME _____ NUMBER: _____
DORM: _____

VISITOR NAME: _____ ST. ADDRESS: _____

1. _____
2. _____
3. _____

CITY: STATE RELATIONSHIP:

1. _____

2. _____

3. _____

NUMBER OF CHILDREN UNDER 18 YRS. OF AGE
EXPECTED: _____

DATE VISIT IS REQUESTED FOR:
MONTH _____ DAY _____ YEAR _____

.....

ADMINISTRATIVE ACTION

THE ABOVE LIST IS:
APPROVED NOT APPROVED

STAFF SIGNATURE _____
DATE _____

This PASS authorizes you to enter the Kentucky State Reformatory and visit the above named resident on the date indicated. You must present this PASS before you will be admitted. Identification will be required of all adult visitors. THIS PASS IS VALID ONLY ON THE DATE INDICATED.

NOTICE RULES FOR NIGHT VISITS NOTICE

1. All visitors must arrive between 6:00 and 6:30 PM or the visit will not be permitted.
2. Visitors must present this PASS or visit will not be permitted.
3. Proper identification of adults is mandatory. Picture identification is required.
4. Visitors will be subject to search.
5. NO ITEMS are to be passed between visitors and residents. Promoting contraband is a FELONY offense.
6. Children must be properly supervised at all times.
7. An evening visit does not take the place of a weekly daytime visit.
8. No money or packages will be received from visitors on Night Visit. Packages will be received by mail ONLY.
9. All visitors must be on the resident's approved visiting list for this special program.

10. All visitors must leave promptly at 8:30 PM.
11. Violation of these rules can result in suspension of visiting privileges.

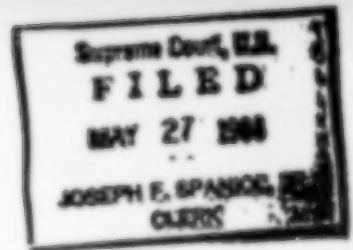
SPECIAL NOTE:

FOOD ITEMS MAY BE BROUGHT IN ON THE VISIT. NONE MAY BE TAKEN BY THE RESIDENT BACK TO THE YARD. ONLY PLASTIC UTENSILS ARE PERMITTED. NO FRUIT OR JUICES OR OTHER BEVERAGES MAY BE BROUGHT IN.

OPPOSITION

BRIEF

IN THE
SUPREME COURT OF THE UNITED STATES
CASE NO. 87-1815



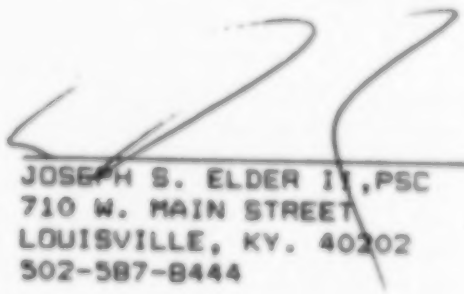
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
DAVID H. BLAND, Petitioner

vs.

JAMES M. THOMPSON, et al., Respondents

MOTION TO PROCEED IN FORMA PAUPERIS ✓

Comes the Plaintiff Class at the Kentucky State Reformatory, by Counsel and with affidavit of a class member attached and petition the Court to Enter the Order attached granting leave to proceed in forma pauperis. Counsel certifies that in the case in the district court below the class proceeded in forma pauperis and that all appeals brought by the plaintiff class in United State Court of Appeals for the Sixth Circuit have been in forma pauperis.


JOSEPH S. ELDER II, PSC
710 W. MAIN STREET
LOUISVILLE, KY. 40202
502-587-8444

I hereby certify that a copy of the above motion, order and supporting documents were sent to all counsel of record this 27th day of May, 1988.


JOSEPH S. ELDER, II

IN THE
SUPREME COURT OF THE UNITED STATES

CASE NO. 87-1815

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
DAVID H. BLAND, Petitioner

vs.

JAMES M. THOMPSON, et al., Respondents

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

On motion of the Respondents herein, and the Court being
sufficiently advised, It is Hereby Ordered that the Respondents,
herein, may proceed in forma pauperis.

JUDGE

DATE

NO. 87-1815

In The
Supreme Court of the United States
October Term, 1987

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
DAVID H. BLAND, Petitioner

v.

JAMES M. THOMPSON, et al., Respondents.

AFFIDAVIT

I, James Peters, being first duly sworn, depose and say
that I am a class member in the above-entitled case; that in support
of my motion to proceed on appeal without being required to prepay
fees, costs or give security therefor, I state that because of my
poverty I am unable to pay the costs of said proceeding or to give
security therefor; that I believe I am entitled to redress; and that
the issues which I desire to present on appeal are that the writ
should be denied.

I further swear that the responses which I have made to
the questions and instructions below relating to my ability to pay
the cost of prosecuting the appeal are true.

I further swear that I am a typical class member.

1. Are you presently employed?

Yes, \$15.00 per month by the Kentucky State

Reformatory in La Grange, Kentucky.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

No.

3. Do you own any cash or checking or saving account?

Yes - institutional account, approximately \$0.00.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

No.


5. List the persons who are dependent upon you for support and state your relationship to those persons.

None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.


JAMES PETERS, # 93689

I declare under the penalty of perjury that the foregoing is true and correct. This 24th day of May, 1988.


JAMES PETERS, # 93689

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1987

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
DAVID H. BLAND, Petitioner

v.

JAMES M. THOMPSON, et al, Respondents.

RESPONSE TO A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH S. ELDER II
710 West Main Street
Louisville, Kentucky 40202
502/587-8444
Counsel for Respondents

BARBARA W. JONES
Corrections Cabinet
Office of the General Counsel
State Office Building
Room 500
Frankfort, Kentucky 40601
502/564-2024
Counsel for Petitioner

Questions Presented

1. Was the Sixth Circuit correct in finding that the Petitioner herein had sufficient mandatory language in it's regulations to create a liberty interest in visitation?

2. The Respondent adopts the other questions presented by the Petitioner.

List Of Parties

The Respondent adopts the list of parties contained in Petitioner's Writ.

Questions Presented	i
List of Parties	ii
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Jurisdiction	2
Statement of the Case	3
Reasons for Denying the Writ	6

I. Visitation Policies like any Policy address the daily operation of the Prison, but denial subjects the inmates to significant loss of familial and other contact.

A. The Sixth Circuit's opinion is soundly based in existing constitutional law and is not an extension of the due process clause 6

B. Minimal due process procedures do not penalize prison officials for implementing procedural guidelines 7

II. The Sixth Circuit's decision only requires due process guidelines when the State creates a expectation that the benefit will continue.

A. The state is not prohibited from drawing policies to confer benefits on inmates; not every policy gives rise to a due process liberty interest-mandatory language is required. . 7

B. The regulation in effect covers an important day to day operation and is critical for continued familial and other contacts 8

III. Sufficient Mandatory Language did exist in the regulation and the Consent Decree to create a liberty interest in continued visitation.

TABLE OF AUTHORITIES

Cases

<u>Beard v. Livesay</u> , 798 F2d 874 (6th Cir. 1986)	10
<u>Bellamy v. Bradley</u> , 729 F2d 416 (6th Cir. 1984, <u>cert den.</u>	
469 US 485, 105 S.Ct. 156 (1984)	6, 9
<u>Bills v. Henderson</u> , 631 F2d 1287 (6th Cir. 1980) . . .	8, 9, 10
<u>Board of Pardons vs. Allen</u> , 482, U.S. 96 L E2d 303, 107 S.Ct.	
2415 (1987)	5
<u>Brennan v. Cunningham</u> , 813 F2d 1 (1st. Cir. 1987). . .	8, 10
<u>Conneticut Board of Pardons v. Dumschat</u> 452 U.S. 458, 69 L. Ed	
2d 158, 101 S.Ct. 2460 (1981)	4, 7
<u>Frances v. Morehead</u> , 805 F2d 798 (8th Cir. 1986)	10
<u>Green v. McKaskle</u> , 788 F2d 1116 (5th Cir. 1986)	5
<u>Hewitt vs. Helms</u> , 459 U.S. 460, 74 L. E2d 276, 103, S.Ct. 864,	
(1983)	3, 4, 5, 7, 8, 9, 10
<u>Kendrick v. Bland</u> , 541 F.Supp 21 (W.D. of Ky. 1981) . . .	2, 3
<u>Kendrick v. Bland</u> , 659 F. Supp. 1188, (W.D. of Ky. 1987) . .	10
<u>Lucas v. Hodges</u> , 730 F2d 1493 (6th Cir. 1984)	9
<u>Mayes v. Trammel</u> , 751 F2d 175 (6th Cir. 1984)	5, 8, 10
<u>Olin v. Wakinhouse</u> , 461 U.S. 238, 75 L.Ed. 2nd 813, 103 S.Ct. 174	
(1985)	4, 7, 8
<u>Parenti v. Ponte</u> , 727 F2d 21 (1st. Cir. 1984)	8, 9, 10
<u>Stephanie v. Wagner</u> , 835 F2d 497 (3rd. Cir. 1987)	8
<u>Stokes v. Fair</u> , 795 F2d 255 (1st. Cir. 1984)	8, 9, 10
<u>Whitehorn v. Harrelson</u> , 758 F2d 1216 (11th Cir. 1985) . .8,	9, 10

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
DAVID H. BLAND, Petitioner

v.

JAMES M. THOMPSON, et al, Respondents.

RESPONSE TO A PETITION FOR A WRIT OF
CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

The Respondent, James M. Thompson, et al. respectfully objects to a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered in the above-titled proceeding on November 19, 1987. Petition for Rehearing En Banc was denied January 6, 1988.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Sixth Circuit is reported at 833 F.2d 614 (6th Cir. 1987) and is reprinted in the Petitioner's Appendix hereto, page A-1, *infra*.

The Memorandum Decision of the United States District Court for the Western District of Kentucky (Johnstone, E.H.), has not been reported, it is reprinted in the Petitioner's Appendix hereto, page A-15, *infra*.

Subsequent to the entry of a Federal Consent decree addressing prison conditions, on January 29, 1986 the Plaintiff Class filed a Motion for Specific Relief in the United States District Court for the Western District of Kentucky with respect to visiting policies.

On June 26, 1986, the United States District Court for the Western District, granted some of the relief sought by Plaintiffs and found that a protectable liberty interest existed in the Consent Decree with respect to visitation thus requiring the implementation of minimal due process procedures when visits were prohibited (App.A-15).

On Defendant's appeal, the Sixth Circuit Court of Appeals on November 19, 1987 entered a Judgment and Opinion affirming the Western District's Orders in part and remanded the case for further findings as to which procedures were applicable (App. A-1).

A Petition for En Banc Rehearing was denied on January 6, 1988 (App. A-14).

JURISDICTION

The jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. 1254, but the Respondent denies there is a conflict among the Circuits.

1. Kendrick v. Bland, 541 F. Supp. 21 (W.D. Ky. 1981).

STATEMENT OF THE CASE

This appeal arises from post Consent Decree litigation concerning the male offenders incarcerated at the Kentucky State Reformatory at LaGrange, Kentucky (hereinafter after KSR). Counsel was appointed by the Honorable Edward Johnstone, Judge of the Federal District Court for the Western District of Kentucky, to represent the inmate class. The conditions case therein was settled by the parties in a landmark model prison settlement entered by the Court on May 4, 1980, Kendrick vs. Bland, 541 F Supp 21 (W.D. Ky. 1981).

Subsequent to that settlement, the KSR Plaintiffs filed motions arguing that the Consent Decree and the Due Process clause required that the Defendants hold Due Process hearings prior to termination of visits.

The Plaintiffs, below, argued that inmate Kenneth Bobbitt's mother had been barred from the Institution for bringing someone to KSR who the Defendants mistakenly believed was someone else. Inmate Bobbitt had no hearing prior to his right to visitation being revoked.

Inmate Kevin Black's visitation with his mother and girlfriend was revoked after he allegedly was in possession of contraband after the visit with them. No hearing was held prior to termination of the inmate's visitation rights.

The inmates petitioned the District Court to require the Defendants to have due process hearings prior to termination of the inmate's visits.

The Court held:

Plaintiffs here claim that since the consent decree provides that "(d)efendants shall continue their open visiting policy," that defendants also must provide a hearing to review revocation of that liberty interest.

In this situation, this court finds no evidence that the Defendants provide for any type of a review of decisions to revoke or suspend visitation privileges. The language of the consent decree is mandatory in character, within the meaning of Hawitt v. Helms, *supra* in that it requires continuation of an open visitation policy. Therefore, the Plaintiffs possess a liberty interest in open visitation, and the defendants must provide minimal due process procedures when visitation

of a prisoner is suspended or revoked. Those procedures should include, and may be patterned after, those provided in Hewitt v. Helms, 103 S.Ct at 874: an informal, nonadversary review in which a prisoner receives notice of and reasons for the revocation, and an opportunity to respond.

(App. A-18)

The Defendants appealed to the Sixth Circuit which affirmed, 833 F.2d 614 (6th Cir. 1987), (App. A-1.)

The Sixth Circuit in discussing the case found mandatory language both in the Consent Decree, and the regulations adopted thereto, (App. A-22-23, A-26-29). The Court held in part:

"Mandatory" language can be found in the consent order and policy statements at issue here. In the consent order, it is written that "Defendants shall continue their open visitation policy" 541 F.Supp. at 37. The policy statement provides further that "An inmate is allowed three separate visits per week" (emphasis added). We recognize, however, that while this mandatory language buttresses the argument for finding a protected liberty interest, it may not be sufficient by itself, to create a protected liberty interest.

In this case, however, each of the three sets of prison policies in effect since the signing of the consent decree placed "substantive limitations on official discretion" Olim v. Wakinekona, 461 U.S. 238, 249 (1983), by enumerating "particularized standards or criteria" to constrain the discretion of state decisionmakers. Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 467 (1981) (Brennan J., concurring). According to the sets of regulations in effect at the time of the signing of the consent decree, and currently, visitors may be excluded only when "there are reasonable grounds to believe" that a visitor's presence would constitute a "clear and probable danger" to the institution's safety, security, or orderly operation. A nonexhaustive series of examples then follows, cited supra in this opinion. Both the "reasonable grounds to believe [a visitor constitutes] a clear and probable danger" and the examples listed that satisfy this

criterion are substantive determination that form the basis for official decisions to exclude visitors. Hewitt, 459 U.S. at 471-71.

A set of policies also apparently in effect since 1981 states that "certain visitors who are either a threat to the security or order of the institution or nonconductive to the successful re-entry of the inmate to the community may be excluded." A similar nonexhaustive series of examples follows, Corrections Policies and Procedures No. 403.06. Thus, the consent order and policy statements indicate that prison officials are constrained by substantive limitations and do not enjoy absolute discretion when excluding visitors.

It is well settled that the presence of regulatory language that meaningfully limits the discretion of decisionmakers can create a liberty interest. Such an interest may be created even if the restrictions imposed are largely predictive and are based upon the application of standards of reasonableness. See Board of Pardons v. Allen, 107 S. Ct. 2415, 2418-21 & N.10 (1987); Mayes v. Trammell, 751 F.2d 175, 178-79 (6th Cir. 1984). We conclude that, given the regulatory and mandatory language discussed above, a liberty interest was created under the circumstances here.

We must remand this case, however, for a further determination of precisely which set of regulations covers the Plaintiff class, the Procedures Memorandum, which we find does create a liberty interest, purports to cover visits at the Kentucky State Reformatory; it is unclear from the record what set of regulations governs visits in other parts of the Kentucky system. We affirm the District Court's holding that the current lack of any kind of hearing does not violate the consent decree. We do not reach, therefore, the issue of whether a consent decree can create a liberty interest enforceable beyond a district court's traditional power to enforce its orders. cf. Green v. McKaskle, 788 F.2d 1116, 1123-24 (5th Cir. 1986)

The decision of the District Court is affirmed in part, as aforesaid, and the case remanded for findings concerning the precise set of

prison regulations applicable to plaintiffs and the precise nature of the limitations on official discretion contained in the applicable regulation and for further proceedings respecting the particular procedural process due the plaintiffs when visitation is denied.

(App. A-8-11)

The matter was remanded to the District Court. The Sixth Circuit denied a request for re-hearing en banc, on January 6, 1988. This appeal followed.

REASONS FOR DENYING THE WRIT

I

The policies addresses important activities of the institution and are critical to the day to day life of an inmate.

II

A. The Sixth Circuit's decision does not extend due process and is not in conflict with this Court's decisions and that of other Circuits.

The visitation policies that were negotiated in the Consent Decree and the regulations promulgated thereunder, are obviously part of the day to day operation of KSR. Any prison regulation will be. However, the importance of visitation to the inmate can not be over stressed. The inmates negotiated continuation "of the open visitation policy at Kentucky State Reformatory." The policies promulgated by the Defendants also speak of the importance of visitation to the inmates.

INMATE VISITS

The Kentucky Department of Corrections encourages visits to inmates by family and immediate friends to maintain morale and contact with the community. Relationships with significant others are to be promoted and facilitated by each institution as visits are important to the inmate and his success within the community upon release.

(App. A-20)

While there is no doubt that inmates do not have a constitutional right to visitation, Bellamy vs. Bradley, 729 F2d 416 (6th Cir. 1984), cert. den. 469 U.S. 845 (1984), that is not

the issue. The issue is whether or not a derivative due process right has been created. The matter of visits is conceded by the Defendants to be an important penological goal. The matter is not so minor as to be beneath the ambit of the due process clause as the Petitioners suggest.

B. Due process hearing does not penalize prison officials for the development of procedures.

The Court should be mindful of several things. First, the hearing requirement applies only to the Kentucky State Reformatory, the consent decree applied to KSR and the Kentucky State Penitentiary, but the "open visitation" applies only to KSR. Secondly, the intrusion is only a Hewitt vs. Helms, 459 U.S. 460, 741 L.Ed 276, 103 S Ct. 864 (1983) hearing of a minimal nature.

Thirdly, the Consent Decree and the procedures are rife with mandatory language. It is well settled law that use of mandatory language followed by non-exhaustive directions can give rise to a due process right. One need look no further than Hewitt vs. Helms, supra at 472. There the Court held:

But on balance we held that the repeated use of explicitly mandatory language in connection with requiring specific substantive predicates demands a conclusion that the State has created a protected liberty interest.

It is important to note in Hewitt at 472, footnote 6, the use of mixed mandatory and permissive language, such as in the case at bar.

II

The Sixth Circuit's decision only requires due process guidelines when the State creates an expectation that the benefit will continue.

Binding internal regulations standing alone can create a due process right. It is evident that the Defendant's have placed the limitations on discretion required by Olim vs. Wakinghouse, 461 U.S. 238, 75 L. Ed. 2d 813, 103, S.Ct. 174 (1983) and Connecticut Board of Pardons vs. Dumachat, 452 U.S. 458, 69 L. Ed. 2d 158, 101 S.Ct. 2460 (1981). In Olim the decision to transfer an inmate was completely unfettered, Olim, supra, at 249; as was the Board of Pardons, in Dumachat, supra at 466. That is hardly the case at bar.

A. The state is not prohibited from drawing policies to confer to benefits on inmates; not every policy gives rise to a due process liberty interest - mandatory language is required.

An examination of the instant right reveals that mandatory language is found in CPP 403.03 (App. A-21), CPP 403.04 (A) (App. A-21), in the Consent Decree, and in KSR Policy and Procedure 16-00-01 (2), (3), (4), (5), (App. A-28). The non exhaustive criteria are found at CPP 403.06 (App. A-22) and KSR 16-00-01 (K) (App. A-49-50). A fair reading of these procedures indicates precisely the kind of language this Court found to create a liberty interest in Hewitt. See also similar language in Parenti vs. Ponte, 727 F2d 21 (1st Cir. 1984), Brennan vs. Cunningham, 813 F2d 1 (1st Cir. 1987), Stokes vs. Fair, 793 F2d 255, (1st Cir. 1986), Hayes vs. Trammel, 751 F2d 175 (6th Cir. 1984). Of particular interest to the Court should be the case of Bills vs. Henderson, 631 F2d 1287 (6th Cir. 1980). The Court there examined guidelines with mixed mandatory and recommended language, and held that the guidelines created a liberty interest.

The Court held:

It is equally clear that the instant case does not fall easily into either of these situations. The Guidelines in this case give prison officials wide discretion in making what is essentially a predictive decision on what would serve the best interests of the institution and the individual. On the other hand, the Guidelines, by specifically outlining the purpose of administrative segregations and recommending the general situations in which it would be appropriate, seek to set the bounds within which that discretion is to be exercised. Bills at 1293.

See also Whitehorn v. Harrelson, 758 F2d 1216 (11th Cir. 1985).

Nor is the Sixth Circuit in conflict with the Third Circuit in Stephanie vs. Wagner, 835 F2d 497 (3rd Cir. 1987). The Court in that case held that there was no mandatory language in the applicable regulations. That is not the case in the regulations at bar. The inmates by the Consent Decree and by the regulations will have normal visiting. The defendant may exclude if certain grounds are met. This is hardly the unfettered discretion of Olin, or Dumschat, but is closely akin to the substantive predicate of Hewitt. The language of Stephanie is distinguishable from that of the case at bar.

B. The regulations in effect cover an important day to day operation and are critical for continued familial and other contacts.

As the Respondent noted above, it is evident, that visitation with one's friends and family is an important penological goal. Both the Consent Decree and the applicable regulations provide mandatory language. The question of whether or not prison rules should be treated differently from statutes or regulations and other areas is a smokescreen. There is an exhaustive line of cases that support the actions of the Sixth Circuit, see Bills vs. Henderson, supra, Whitehorn, supra, Parenti, supra, Stokes, supra, and Frances vs. Morehead, 805 F2d 798, (8th Cir. 1986). The language of Lucas vs. Hodges, 730 F2d 1493 (D.C. Cir. 1984) is particularly instructive as to the settled state of the law.

The Court held at 1504:

We agree with the conclusion reached by every circuit that has squarely considered the issue that a prisoner may acquire a protected liberty interest by virtue of official policy statements or regulations duly promulgated by administrators of the particular institution at which the prisoner is confined.

Requiring a Hewitt type hearing where there is mandatory language in a Consent Decree, and in applicable regulations hardly merits the beating of the doomsday drums by prison officials.

Of course, restrictions on prison programs for security reasons are permissible as the District Court found below, citing Bellamy.

This Court finds that these regulations are not vague or arbitrary and are within the principals set forth in Bellamy vs. Bradley, 729 F.2d 416 (6th Cir. 1984). This case provides that inmates do not possess a constitutional right to visitation and that prison officials may impose limitations when necessary to ensure the safety of the institution.

(App. A-16)

III

Sufficient mandatory language did exist in the regulations and the Consent Decree to create a liberty interest in continued visitation.

The only thing the District Court and the Sixth Circuit said is that these particular policies and procedures at this institution coupled with this Consent Decree gives rise to a liberty interest in continued visitation.

Again, liberty interests have been found in a variety of prison matters: parole (Mayer vs. Trammel, supra), classification (Beard vs. Livesay, 798 F.2d 874)(6th Cir. 1986), disciplinary segregation, (Frances, supra), pre-hearing detention (Stokes, supra), work release (Brennan, supra), segregation (Parenti, supra), administrative segregation (Billa, supra), and work release, (Whitehorn, supra).

The Supreme Court in Hewitt vs. Helms, was mindful of the potential problem of that the creation of liberty interests in day to day prison regulations might cause. The Court wisely looked at the real issue:

The repeated use of explicitly mandatory language in connection with requiring specific substantive predicates demands a conclusion that the State has created a protected liberty interest, Hewitt at 472.

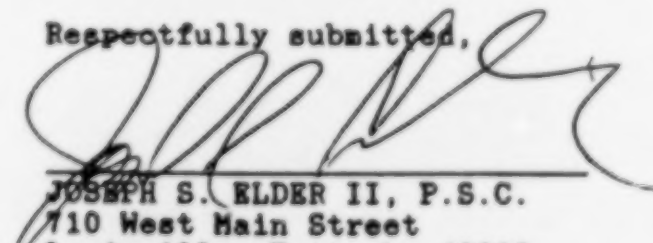
CONCLUSION

The bloody shirt of too much involvement by the Federal Courts in the operation of the prison system has been waved at every prisoner's rights issue from the Tucker telephone to medical care.

The Respondents, nor the District Court, nor the Sixth Circuit want excessive entanglement. The District Court, per Judge Johnstone, has found that the Defendants were in substantial compliance with the Consent Decree, see Kendrick vs. Bland, 659 F. Supp. 1188 (W.D. of Ky. 1987), and placed the case on inactive status.

This Court should deny the writ requested by the Petitioner, and let this portion of Kentucky Correctional History close.

Respectfully submitted,


JOSEPH S. ELDER II, P.S.C.
710 West Main Street
Louisville, Kentucky 40202
502/587-8444

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1987

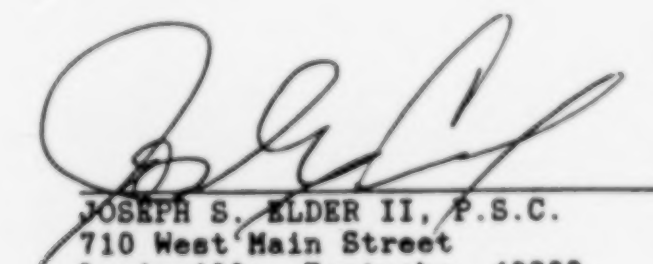
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
DAVID H. BLAND, Petitioner

v.

JAMES M. THOMPSON, et al, Respondents.

CERTIFICATE

I hereby certify that a true copy of the Response to a Petition for a Writ of Certiorari was mailed to Barbara W. Jones, Corrections Cabinet, Office of the General Counsel, State Office Building, Room 500, Frankfort, Kentucky 40601 on this 27 day of May, 1988.


JOSEPH S. ELDER II, P.S.C.
710 West Main Street
Louisville, Kentucky 40202
502/587-8444

SUPREME COURT OF THE UNITED STATES

No. 87-1815

Commonwealth of Kentucky vs. James M. Thompson, et. al.
 (Petitioner or Appellant) (Respondent or Appellee)
 Department of Corrections, David H. Bland
 The Clerk will enter my appearance as Counsel of Record for Respondent, James M. Thompson

(Please list names of all parties represented)

who IN THIS COURT is ☐ Petitioner(s) ☒ Respondent(s) ☐ Amicus Curiae
☐ Appellant(s) ☐ Appellee(s)

I certify that I am a member of the Bar of the Supreme Court of the United States:

Signature

(Type or print) Name JOSEPH S. ELDER II, P.S.C.

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm JOSEPH S. ELDER II, P.S.C.

Address 710 West Main Street

City & State Louisville, Kentucky Zip 40202

Phone (502) 587-8444

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE. THAT ATTORNEY WILL BE THE ONLY ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES MAY FILE AN APPEARANCE FORM.

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED.

SUPREME COURT OF THE UNITED STATES

Commonwealth of Kentucky,
 Department of Corrections,
 David H. Bland

Petitioner—Appellant

No. 87-1815

James M. Thompson, et al

Respondent—Appellee

To Joseph S. Elder, II Counsel for Respondent—Appellee

YOU ARE HEREBY NOTIFIED that a petition for a writ of certiorari—~~an appeal~~—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 4th day of April, 1988.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed with the Clerk by the counsel of record who will represent your party. The form should be filed at or before the time you file your response to our petition—jurisdictional statement.

Only counsel of record can expect to receive notification of the Court's action(s) in this case.

Barbara W Jones

Counsel for Petitioner—Appellant

500 State Office Bldg.

Number and Street

Frankfort, KY 40601

City, State and Zip Code

502/564-2024

Telephone Number

NOTE: Please indicate whether the case is a petition for certiorari or an appeal by crossing out the inapplicable terms. A copy of this notice should NOT be filed in the Supreme Court.

AMICUS CURIAE

BRIEF

No. 87-1815



In The
Supreme Court of the United States

October Term, 1987

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,

Petitioner,

v.

JAMES M. THOMPSON, et al.,

Respondents.

AMICUS BRIEF FOR THE STATES OF TENNESSEE, ALABAMA,
ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, FLORIDA, HA-
WAI, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, MAINE,
MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOU-
RI, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY,
NEW MEXICO, NORTH CAROLINA, OHIO, SOUTH CAROLINA,
TEXAS, UTAH, WEST VIRGINIA, WISCONSIN AND WYOMING
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

W. J. MICHAEL CODY
Attorney General of Tennessee

MICHAEL W. CATALANO*
Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
(615) 741-3499

*Counsel of Record

[Other Counsel Listed on Inside of Front Cover]

Honorable Don Siegelman
Attorney General of Alabama

Honorable Grace Berg Schaible
Attorney General of Alaska

Honorable Robert K. Corbin
Attorney General of Arizona

Honorable John Steven Clark
Attorney General of Arkansas

Honorable John Van de Kamp
Attorney General of California

Honorable Robert Butterworth
Attorney General of Florida

Honorable Warren Price, III
Attorney General of Hawaii

Honorable Jim Jones
Attorney General of Idaho

Honorable Neil F. Hartigan
Attorney General of Illinois

Honorable Linley E. Pearson
Attorney General of Indiana

Honorable Thomas J. Miller
Attorney General of Iowa

Honorable Robert T. Stephan
Attorney General of Kansas

Honorable James E. Tierney
Attorney General of Maine

Honorable J. Joseph Curran, Jr.
Attorney General of Maryland

Honorable Frank J. Kelley
Attorney General of Michigan

Honorable Hubert H.
Humphrey, III
Attorney General of Minnesota

Honorable Michael C. Moore
Attorney General of Mississippi

Honorable William L. Webster
Attorney General of Missouri

Honorable Robert M. Spire
Attorney General of Nebraska

Honorable Brian McKay
Attorney General of Nevada

Honorable Stephen E. Merrill
Attorney General of New
Hampshire

Honorable W. Cary Edwards
Attorney General of New Jersey

Honorable Hal Stratton
Attorney General of New Mexico

Honorable Lacy H. Thornburg
Attorney General of North
Carolina

Honorable Anthony J.
Celebrezze, Jr.
Attorney General of Ohio

Honorable T. Travis Medlock
Attorney General of South
Carolina

Honorable Jim Mattox
Attorney General of Texas

Honorable David L. Wilkinson
Attorney General of Utah

Honorable Charlie Brown
Attorney General of West
Virginia

Honorable Don J. Hanaway
Attorney General of Wisconsin

Honorable Joseph B. Meyer
Attorney General of Wyoming

QUESTION PRESENTED

Whether use of some mandatory language in a prison policy which does not concern the duration or level of an inmate's confinement, i.e. visitation procedures, creates a constitutionally protected liberty interest in such a policy?

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No. 87-1815

In The
Supreme Court of the United States
October Term, 1987

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,

Petitioner,

v.

JAMES M. THOMPSON, et al.,

Respondents.

AMICUS BRIEF FOR THE STATES OF TENNESSEE, ALABAMA,
ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, FLORIDA, HA-
WAI, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, MAINE,
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RI, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY,
NEW MEXICO, NORTH CAROLINA, OHIO, SOUTH CAROLINA,
TEXAS, UTAH, WEST VIRGINIA, WISCONSIN AND WYOMING
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The amici states urge that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled proceeding on November 19, 1987, and reported at 833 F.2d 614 (6th Cir. 1987). The petition for rehearing *en banc* was denied on January 6, 1988.

INTEREST OF AMICI STATES

The amici states have an important interest in this case, namely: All of the amici states have visitation policies at their correctional institutions similar to the visitation regulations of the Kentucky State Reformatory. More significantly, there are a number of other policies at the correctional institutions of the amici states concerning the daily operation of prisons ranging from inmate job assignments to telephone privileges which in all likelihood are also affected. The efficient operation of correctional facilities is a vital interest to each and every amici state.¹

Administrators of state correctional facilities must provide guidelines for their correctional officers in the daily operation of facilities. Without these guidelines, management of this country's correctional institutions would be difficult at best and chaotic at worst. Likewise, if such policies are made so vague as to be meaningless, correctional officers, who must make quick judgments in the daily operation of a facility with virtually no legal training, would be left with little or no guidance from their managers. With many prisons being overcrowded and under funded in the 1980's,² corrections officers are especially in need of policy guidelines to channel their decision-making process.

The amici states can and will provide this Court with additional insight as to why this petition for writ of cer-

¹Presumably, federal correctional facilities would also be affected by the Sixth Circuit's broad view of liberty interest in day-to-day policies promulgated by the federal Bureau of Prisons.

²According to a 1988 survey by the Corrections Task Force of the National Association of Attorneys General, 29 of the 46 states responding have correctional facilities subject to a court order. The matters under court order ranged from conditions of confinement including overcrowding to access to court.

torari should be granted. The visitation policies of the Kentucky State Reformatory are not isolated and obscure regulations. Such rules form the foundation of the daily operation of this country's state correctional facilities.

It is the position of the amici states that regulations similar to the visitation procedures at the Kentucky State Reformatory relating to the daily operation of a prison do not create a liberty interest in such procedures entitling inmates to a due process hearing. Such regulations are not intended to substantively limit an officer's discretion and thereby create another level of constitutional litigation, but rather to provide guidance for the efficient operation of the prison system. Amici states will endeavor to show this Court the importance of this case and urge this Court to grant the petition for writ of certiorari.

STATEMENT OF THE CASE

This case arises out of a consent decree entered on May 4, 1980, which addressed conditions of confinement at the Kentucky State Reformatory and Kentucky State Penitentiary, including visitation privileges. *Kendrick v. Bland*, 541 F.Supp. 21 (W.D. Ky. 1981). In particular, the facts concern two incidents which occurred at the Kentucky State Reformatory regarding the suspension of visitation by certain individuals to inmates at that institution. The first incident pertained to the mother of inmate Kenneth Bobbitt, who had been denied the right to visit him for a limited period of time because she had brought to the institution an individual by the name of Gerald Eastman who previously had been barred from the institution

for smuggling contraband. The second incident concerned the mother and girlfriend of inmate Kevin Black who were barred from the institution for a limited period of time after Mr. Black was convicted of possession of contraband received immediately after a visit with his mother and girlfriend.

These inmates, on behalf of themselves and the class, argued that the suspension of their visitors' privileges without due process violated the consent decree and correspondingly the due process clause. The relief requested by the plaintiff class to the district court was an order to require the defendants to conduct due process hearings prior to suspension of any visit, and in an emergency, a post-suspension hearing.

The district court held that the language of the consent decree established mandatory visitation protected by the due process clause and ordered the defendants to implement minimum due process procedures to include notice to the inmate of and reasons for the revocation or suspension of a visitor and an opportunity for the inmate to respond. The district court did not address the question of whether any of the policies of the Kentucky State Reformatory relative to visitation created any protectable liberty interest but based its decision solely on the mandatory language contained in the consent decree.

The defendants appealed the district court's order to the United States Court of Appeals for the Sixth Circuit which affirmed the district court's finding that a liberty interest existed which was protected by the due process clause. However, the Sixth Circuit did not address the issue of whether the consent decree created a protected

liberty interest but rather determined that the visitation procedures of the Kentucky State Reformatory created such a liberty interest. Based upon certain language contained in the visitation procedures, the Sixth Circuit concluded that these prison policies placed "substantive limitations on official discretion by enumerating particularized standards or criteria to constrain the discretion of state decisions makers." [citation omitted] *Thompson v. Commonwealth of Kentucky*, 833 F.2d 614, 618-19 (6th Cir. 1987). A petition for rehearing *en banc* was denied by the Sixth Circuit on January 6, 1988.

REASONS FOR GRANTING THE WRIT

I.

WHETHER PRISON POLICIES SUCH AS THE VISITATION PROCEDURES OF THE KENTUCKY STATE REFORMATORY CREATE A LIBERTY INTEREST IS AN IMPORTANT CONSTITUTIONAL ISSUE WHICH HAS NOT BEEN AND NEEDS TO BE SETTLED BY THIS COURT.

The central focus of this case pertains to the test enunciated by this Court in the case of *Hewitt v. Helms*, 459 U.S. 460 (1983), for determining whether a state statute, regulation or policy at a correctional institution by its adoption creates a liberty interest entitled to due process. Of course, there is no dispute that a inmate does not have a separate liberty interest in visitation privileges while incarcerated. See, *Thompson v. Commonwealth of Kentucky*, 833 F.2d at 617 (Prison inmates have no absolute constitutional right to visitation).

The *Hewitt* test for determining whether a policy, procedure or statute creates a liberty interest is stated as follows:

[The] repeated use of explicitly mandatory language in connection with requiring specific substantive predicates demands a conclusion that the state has created a protected liberty interest.

Id. at 472.

It is the position of the amici states that the Sixth Circuit overextended the *Hewitt* test to apply to policies pertaining to the daily operation of a prison, i.e., visitation, by ignoring the purpose of such policies and the disastrous effect of the application of such a test upon the daily operation of state correctional facilities across this country. The decisions of this Court relative to the creation of a liberty interest by a prison policy have been limited to prison policies concerning the level and duration of confinement and did not concern the day-to-day operation of a prison. *Hewitt v. Helms, supra* (administrative segregation); *Greenholtz v. Inmates of Nebraska Penal and Cor.*, 442 U.S. 1 (1979) (parole); *Wolff v. McDonnell*, 418 U.S. 539 (1974) (good time credits). Compare, *Olim v. Wakinekona*, 461 U.S. 238 (1983) (no liberty interest involving interstate transfer of inmate to maximum security facility); *Meachum v. Fano*, 427 U.S. 215 (1976) (no liberty interest in intrastate transfer of inmate from medium security facility to maximum security facility).

This distinction was noted by Judge Wellford in his concurring opinion of the court of appeals in this case:

My reluctance about creation of a liberty interest involves the following considerations. Visitation is merely a part of the daily operation of the prison,

which affects only the circumstances of the prisoner's situation in prison. By contrast, parole and good time credit decisions affect a prisoner's *release* from custody, which fully implicates his "liberty" in the ordinary meaning of the word. Moreover, "the concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution." [Citation omitted] Decisions concerning visitation privileges, therefore, involve, in my view, even less of an encroachment on a prisoner's remaining "freedoms" while in prison than do decisions concerning his associational rights or placement within the prison. Administrative or disciplinary segregation directly affects the prisoner's "liberty" and it further restricts his freedom to be in certain areas or associate with certain inmates. The decision to exclude an outside visitor does not affect in the same sense or degree the "freedoms" of association or placement within the prison. Furthermore, excluding a certain visitor but allowing others to visit the prisoner represents a relatively minor "deprivation." I recognize also that a state may create a liberty interest in freedom from even relatively minor deprivations.

Thompson v. Commonwealth of Kentucky, 833 F.2d at 617 (Wellford, J., Concurring).

Why should such a distinction make a difference in whether or not a liberty interest is created? The answer lies in the purpose of the visitation policies and the effect that a creation of a liberty interest would have upon the operation of such correctional facilities.

The purpose of day-to-day policies such as visitation privileges is to provide guidance to correctional officers in their decision-making process, not to grant a constitutional entitlement to inmates. In *Hewitt*, this Court noted that:

The creation of procedural guidelines to channel the decision making of prison officials is, in the view of many experts in the field, a salutary development. It would be ironic to hold that when a state embarks on such desirable experimentation it thereby opens the door to scrutiny by federal courts, while states that choose not to adopt such procedural provisions entirely avoid the strictures of the due process clause.

Hewitt v. Helms, 459 U.S. at 471.

The purpose of the visitation procedures at the Kentucky State Reformatory is to provide guidance to correctional officers who must deal with visitation on a daily basis. As with the State of Kentucky, the correctional institutions in the amici states are attempting to provide procedural guidelines for all aspects of life in correctional institutions in order to carry out the purposes for which such institutions were established, namely: the orderly and nonviolent incarceration of persons convicted of crimes. Aspects of life such as visitation, telephone and recreation privileges along with job assignments, which may appear to the average citizen as minor, take on important significance to inmates who are incarcerated in confined areas for long periods of time. Correctional officials are attempting to provide guidance to their employees with respect to these day-to-day matters in order to be fair to the inmates and avoid arbitrary decision making. This Court has agreed on a number of occasions that federal courts should not become involved in the day to day operation of state correctional facilities. *Meachum v. Fano*, 427 U.S. at 229; *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973); *Cruz v. Beto*, 405 U.S. 319, 321 (1972); *Johnson v. Avery*, 393 U.S. 483, 486 (1969).

The effect of creation of a liberty interest in the visitation policies of the Kentucky State Reformatory and other similar day to day policies in correctional institutions across this country will be to create a "no win" situation for corrections officials. They would be left with a Hobson's choice: (1) adoption of policies which provide direction to correctional officers and thereby require hearings over every phase of institutional life; or (2) the establishment of vague standards [or no standards at all] in order to avoid the creation of a liberty interest. Unfortunately, correction officials would be forced into playing semantic games in an attempt to develop policies which provide guidance to officers and at the same time do not create any liberty interests. The prison system as a whole would be the loser.

Not only are visitation policies affected by the Sixth Circuit's mechanical application of the *Hewitt* test, but there are also a number of other policies pertaining to the daily operation of a prison which may be subject to creation of a liberty interest. Such policies include: (1) library privileges, (2) inmate job assignments, (3) inmate grievances, (4) inmate personal property, (5) telephone privileges, (6) fire safety and evacuation, (7) pest control, (8) sewage and waste disposal, (8) control and use of flammable, toxic and caustic substances, (10) health services, (11) food services, (12) educational services, (13) inmate organizations, (14) leisure time programs, (15) arts and crafts programs, (16) recreation facilities, and (17) inmate mail.

A solution to this paradox is that correction officials outside the area of policies relating to length and duration of confinement should be able to establish policies which

provide guidance to their corrections officers even with the use of some mandatory language. No entitlements to inmates are created by these policies. This solution was more articulately stated by the Seventh Circuit in the case of *Miller v. Henman*, 804 F.2d 421 (7th Cir. 1986):

In this view there are only two possibilities: rules that mention criteria of decision and therefore create liberty or property interests, and vague standards (written or not) that leave unfettered discretion. We conclude that the constitution does not forbid a third alternative: Written rules that create no entitlements and no hearings.

Id. at 426.³

In the present case, the Sixth Circuit relied upon the following language in the visitation procedures of the Kentucky State Reformatory to determine that there were repeated uses of mandatory language requiring specific substantive predicates:

An inmate is allowed three separate visits per week.

. . .

A visitor may be denied a visit at any time if one or more of the following exists or there are reasonable grounds to believe that: (a) the visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institu-

³It should be noted that the *Miller* decision concerned a federal correctional facility and that the court held there to be no liberty interest because the policies in question were not promulgated under the Administrative Procedures Act. *Miller*, 804 F.2d at 427. However, under the Sixth Circuit's analysis in the present case, such policies and procedures would give rise to a liberty interest because of the use of mandatory language. *Id.* at 423.

tion or would interfere with the orderly operation of the institution including but not limited to [a list of examples].

Id.

The problem with the Sixth Circuit's conclusion is that the "safety and security of an institution" has been considered paramount even in the absence of such a procedure. *O'Lone v. Shabazz*, 107 S.Ct. 2400 (1987). That substantive predicate exists with respect to all actions of corrections officials and has no separate meaning with respect to the visitation policies. Moreover, the visitation procedures also provide that the "administrative staff reserves the right to allow or disallow visits." *Thompson v. Commonwealth of Kentucky*, 833 F.2d at 615.

The visitation procedures at the Kentucky State Reformatory are only intended to provide guidance to corrections officers in determining whether or not to permit a particular individual to visit an inmate. The discretion of the correction officer is not limited in such a way as to give rise to any entitlement and liberty interest in such guidelines. The significance of this case lies not in the particular language used with respect to these visitation procedures, but the fact that the Sixth Circuit has extended this Court's analysis in the *Hewitt* case to apply to guidelines pertaining to the daily operation of a prison which were never intended to establish any entitlements for inmates. The importance of that issue cannot be overestimated and should be addressed by this Court.

II.

THE DECISION OF THE SIXTH CIRCUIT IN THIS CASE CONFLICTS WITH THE BASIC ANALYSIS OF OTHER CIRCUITS PERTAINING TO THE CREATION OF LIBERTY INTERESTS IN PRISON POLICIES AND PROCEDURES.

The decisions of other circuits do not accord with the Sixth Circuit's analysis of this Court's test in the *Hewitt* case. Although there have been no other circuit decisions relating to visitation procedures, the amici states contend that a number of other circuits have rendered decisions which interpret *Hewitt* in a conflicting manner with the Sixth Circuit.

In the case of *Stephany v. Waggoner*, 835 F.2d 497 (3d Cir. 1987), the Third Circuit held that county prison regulations which specified four occasions for administrative segregation did not create a due process liberty interest for the prisoner where the rules required only that the shift commander report to the warden or assistant warden who should use his discretion in determining whether administrative segregation is appropriate. The court noted that the *Hewitt* regulations mandated that an inmate be notified in writing and that he will receive a hearing. *Id.* at 501. The absence of similar procedures in the *Stephany* case led the Third Circuit to conclude that no liberty interest was created. Likewise, in the present case there is no provision in the visitation procedures for any notice or hearing in the event a visitor is denied access to an inmate. Although such a distinction is not crucial in this analysis, it is a relevant factor which was not considered by the Sixth Circuit.

In the case of *Dace v. Mickelson*, 816 F.2d 1277 (8th Cir. 1987), the Eighth Circuit held that where a statute, rule or regulation only mandates that state officials follow certain procedures or take into account certain factors, but specifically provide that a prisoner's release is discretionary with the Board of Paroles, then no protected liberty interest has been created. In other words, even though a prison procedure may use mandatory language in certain parts, it does not create a liberty interest where there is a reservation clause for the discretion of the correction official. In the present case, the Sixth Circuit ignored the language of the visitation policy of the Kentucky State Reformatory which states that "administrative staff reserves the right to allow or disallow visits . . ." *Thompson v. Commonwealth of Kentucky*, 833 F.2d at 615. Such equivocal language supports the amici states' contention that the procedures are intended as guidelines for corrections officers and not entitlements to inmates.

In *Baumann v. Arizona Department of Corrections*, 754 F.2d 841 (9th Cir. 1985), the Ninth Circuit took a restrictive interpretation of this Court's "shall/unless" formula in the *Greenholtz* decision relating to denial of custodial release on a work furlough program. The Court noted that "guidelines used to structure the exercise of discretion making release decisions do not create a protected interest and that this Circuit joins the majority of other circuits that endorse a restrictive interpretation of *Greenholtz*." *Id.* at 844. If such a restrictive analysis applies to matters pertaining to the length of confinement, then clearly day to day matters such as visitation privileges also require a clear and unequivocal expression

in the policy that the correction officer's discretion must be virtually eliminated before there is the establishment of an entitlement and liberty interest in such a policy. On the other hand, the Sixth Circuit has taken a very broad interpretation of this Court's decisions in *Hewitt* and *Greenholtz* by attaching great significance to the use of some mandatory language in the policy along with the use of a substantive predicate which applies to virtually all acts of correction officers, *i.e.*, the safety and security of the institution. Based upon these conflicts, this Court should grant this petition for writ of certiorari.

CONCLUSION

Based upon the foregoing authorities and analysis, the amici states would urge this Court to grant the petition for writ of certiorari.

Respectfully submitted,
W. J. MICHAEL CODY
Attorney General and Reporter

MICHAEL W. CATALANO
Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
(615) 741-3499

JOINT APPENDIX

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No. 87-1815

Supreme Court, U.S.

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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, Et Al.,** - - - Petitioners,

JAMES M. THOMPSON, Et Al., - - - Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

JOINT APPENDIX

BARBARA WILLETT JONES*

*Corrections Cabinet
Office of General Counsel
State Office Building
Room 500
Frankfort, Kentucky 40601
502/564-2024*

Counsel for Petitioners

**LESLIE PATTERSON VOSE
LANDRUM & SHOUSE**

*106 West Vine Street
P.O. Box 951
Lexington, Kentucky 40588-0951
606/255-2424*

Counsel for Petitioners

**Counsel of Record*

JOSEPH S. ELDER II*

*710 West Main Street
Louisville, Kentucky 40202
502/587-8444*

Counsel for Respondents

**Petition for Certiorari Filed April 4, 1988
Certiorari Granted June 27, 1988**

16848

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RELEVANT DOCKET ENTRIES

Date	Docket #	
4/04/80	145	Consent Decree—settlement of conditions Suit
7/22/80	470	Supplemental Partial Consent Decree—settlement of harassment issue
01/29/86	879	Motion — Filed by plaintiff, class re: visitation, requesting due process hearing upon suspension of visitation privileges
02/21/86	906	Defendant's Response — object, no liberty interest created
04/18/86	930	Court Order to produce visitation policies
04/25/86	941	Defendant's production of visitation policies
06/28/86	982	Memorandum Opinion: suspension revocation of visitation privileges without procedural due process is violative of Due Process Clause
06/28/86	983	Court Order — implement minimal due process as suggested by <i>Hewitt</i>
07/30/86	1013	Order granting stay pending appeal
11/19/87		Order—United States of Appeals for the Sixth Circuit — visitation policies alone create protected interest and remand for further proceedings
01/06/88		Order—Sixth Circuit denying a petition for rehearing
06/27/88		Respondent's motion for leave to proceed in forma pauperis granted and petition for writ of certiorari granted

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 76-0079-P
Consolidated With 79-0092-P

79-0001-L

JERALD L. KENDRICK, et al., - - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - - Defendants,

JAMES M. THOMPSON, et al., - - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - - Defendants,

UNITED STATES OF AMERICA, - - - - Amicus Curiae

CONSENT DECREE

By agreement of the parties and the United States of America, Amicus Curiae, the following Consent Decree is approved by the Court to resolve the issues being litigated in Civil Action No. 76-0079-P and those cases consolidated therein by the Court.

1. GENERAL PROVISIONS

Without admitting that the defendants have violated any constitutional rights of the plaintiffs, the defendants and plaintiffs submit the following agreement to address the issues raised in the above-styled cases:

A. The defendants shall within six months from the date of entry of this Decree submit to this Court a written report setting forth any timetables not included in this

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Decree to fully implement the proposals made in this Decree.

B. Plaintiffs and *Amicus* shall have sixty (60) days to object to the plan referenced in paragraph A above.

C. For any plans proposed in this Decree, the parties shall make a reasonable effort to resolve any issues in controversy through negotiation and if the parties are unable to resolve the controversy through this process, the Court shall conduct a hearing on these issues. In any event, all plans shall be submitted to the Court for approval and incorporation into the Decree.

D. The Court shall retain jurisdiction in this case until the plan submitted to the Court is fully implemented.

E. Counsel for plaintiffs and *Amicus* shall have access to records related to implementation of this Decree at reasonable times. Counsel for plaintiffs shall have access to their clients at reasonable times and under reasonable circumstances.

F. Defendants shall immediately explain the terms of this Decree to all of their agents, servants, representatives, and employees, including institutional staff, guards and other personnel, in order to assure their understanding of the requirements of this Decree and the necessity for strict compliance therewith.

G. Within ten (10) days of the date of this Decree, defendants shall provide notice to the class (a) by providing a copy of this Decree to each plaintiff class member; (b) by posting copies of this Decree in all housing units; and (c) by making ten copies of this Decree available in all institutional libraries.

H. Members of the plaintiff class shall have the right to individually submit written objections to the Court within forty (40) days of entry of this Decree.

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I. By entering into this Decree, plaintiffs and members of the plaintiff class are not waiving any rights to pursue individual claims for declaratory, injunctive, and/or monetary relief. The only claims against defendants settled herein are claims for injunctive relief of a general nature, applicable to more than the individual circumstances of a particular plaintiff class member.

J. All programs dealing with the capital construction for Fiscal Year 1980-82 have been essentially approved by the leadership of the executive and legislative branches of government and are ultimately subject to ratification by the entire Kentucky General Assembly. The defendants believe that the politically responsible position on all capital construction and program funding should be resolved through the legislative process. However, should the programs proposed herein not be approved by the General Assembly, the defendants will secure necessary funding through appropriate legal processes.

2. POPULATION/HOUSING

Problems relating to population and housing will be addressed through an extensive capital construction program. In the area of population, the defendants agree to do the following:

A. The defendants agree to reduce the general population at the Kentucky State Penitentiary and Kentucky State Reformatory by a total of six hundred (600) inmates within six (6) months of the date of this Decree. The base figure for reduction of population at Kentucky State Reformatory shall be 2100. This reduction in total population of both institutions shall be accomplished by, but not be limited to the following measures: implementation of legislation eliminating the minimum security restrictions cur-

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rently included in the law, the development of community based release centers, consideration for parole of individuals with detainers from other jurisdictions, re-classification, and re-evaluation of current policies concerning the issuance of parole violation warrants. The plan for implementation will include those measures found in Section 13.

B. The defendants agree that within one (1) year of the date of this Decree, and thereafter, the population in each and every housing unit at the Kentucky State Penitentiary and Kentucky State Reformatory shall be the rated capacity of both institutions, using American Correctional Association standards for dormitories at the Kentucky State Reformatory, single cells for other housing areas at the Kentucky State Reformatory and single cells for the Kentucky State Penitentiary. As of such date, no open dormitory at Kentucky State Reformatory shall contain double bunks. Provided, however, inmates at the Kentucky State Penitentiary may voluntarily elect to double cell.

C. For purposes of determining the rated capacity of the Kentucky State Reformatory, the open wing dormitories are adequate to house 156 inmates using the American Correctional Association standard of sixty (60) square feet per inmate.

D. The defendants agree that the total population confined at the Kentucky State Penitentiary will not exceed the number of cells available and habitable at any time on or after January 1, 1983.

E. The defendants agree that any new construction of living areas pursuant to this proposal will comply with American Correctional Association standards and that any renovation of living areas pursuant to this proposal will comply with such standards where structurally practical.

Consent Decree

The Bureau does not have written short-term or long-term maintenance programs for either the Kentucky State Penitentiary or Kentucky State Reformatory. However, repairs which can be accomplished by institutional staff and inmate work crews will be completed on a regular basis. This includes electrical problems, plumbing problems, and general repairs. The Bureau shall submit to the Court a comprehensive written short-term and long-term maintenance program within six (6) months of entry of this Decree. This program shall be designed to bring all living units into compliance with plumbing, electrical, ventilation, heating and other applicable state codes, except for conditions that can be corrected only through complete renovation.

In addition to maintenance programs, the Bureau shall submit to the Court a written plan addressing the areas of sanitation and pest control within three (3) months of entry of this decree.

In the area of fire safety, all major fire and safety deficiencies have been addressed in the capital construction budget included in this proposal. Fire safety training and evacuation programs will be implemented as soon as possible but not later than three (3) months from entry of this Decree.

The Bureau's proposed capital construction and housing program is enclosed as "Attachment A", and incorporated herein by reference.

As an interim measure, the Bureau will, within thirty (30) days of entry of the Decree, bring the cell houses at the Penitentiary and the dormitories and cell blocks at the Reformatory into compliance with the regulations promulgated under the Kentucky Confinement Facilities Act, whenever possible, with special attention to ventilation, temperature, lighting, and sanitation. These interim mea-

Consent Decree

sures are necessary to alleviate the effects of the current living conditions in the two facilities during the summer months of 1980, and during the subsequent period until the Bureau's capital construction program and maintenance program alleviate these conditions permanently.

3. CLASSIFICATION

The defendants agree to bring the classification system into full compliance with American Correctional Association standards within nine (9) months. The defendants agree to provide a written handbook of institutional rules to all current and future inmates in the Admission and Assessment Center, the Kentucky State Reformatory, and the Kentucky State Penitentiary within three (3) months of entry of this Decree. The defendants agree to fully implement the Progressive Incarceration Plan forms within sixty (60) days of this Decree, and to review each inmate's plan every six (6) months thereafter.

Further, defendants agree to have the current classification system evaluated by the National Institute of Corrections. The evaluation will be submitted to the parties for review within three (3) months of entry of this Decree.

4. PROGRAMS

The Bureau of Corrections will offer substantial programs to inmates through proper and appropriate classification which will aid an inmate in his rehabilitation and prepare him for release from confinement. Defendants agree to evaluate inmate programs to consider expansion of professional staffed programs to meet the needs of the inmates. The programs currently offered will be maintained at least at their present level. These programs include, but are not limited to:

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Living Skills Program

A program designated as the Living Skills Program operates in three segments and each segment is directed to aid an inmate in dealing with his status as he progresses through the penal system. Specific persons are hired as living skills personnel to administer the segments.

The first segment, (T-1), is designed to help the inmate develop certain skills to function within the institution, specifically communication, decision making, and planning skills. The first segment is initiated in the Admissions and Orientation Unit at the Kentucky State Reformatory.

The second segment, (T-2), provides training for the development of daily survival skills. The inmate is advised on budgeting, family planning, health and hygiene, consumerism and banking.

The third segment, (T-3), is an attempt to prepare the inmate for his transition from confinement, such as the inmate's employability and methods for getting, keeping, and terminating employment, as well as upgrading employment once employment is obtained.

This Living Skills Program functions at both institutions.

Education

The academic program at both institutions includes specifically:

- 1) Title I—Education Program—jointly funded by federal and state agencies which provide an education program for the disadvantages individuals under the age of 21 with learning problems and learning disabilities

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- 2) Title—IV A—Library Program with joint funding from federal and state agencies which provide a professional librarian at each institution; funding for institution library publications; an inter-library loan program so that any book desired by an inmate is available usually within one week after request is made; and a Bookmobile Service at La-Grange.
- 3) Programs of individualized instruction designed and marketed by Pace Learning Systems, Inc. with an audiovisual approach for the education of adults from 0-8th grade level.
- 4) Grades 8-12 educational program and GED (high school equivalency) testing program.
- 5) Night school—Basic Adult Educational Programs
- 6) Two year college level program which permits the accumulation of hours for the acquisition of an Associates Degree or toward the acquisition of a Bachelor's Degree.

The defendants agree to establish a college level program which leads to the acquisition of a Bachelor's Degree.

No inmates shall be disqualified from an academic program, except for disruptive behavior in class or for violation of institutional rules such that an inmate becomes unable to attend class for more than thirty (30) days.

The defendants agree to provide access to the main library at each institution one day during the weekend in addition to the regular weekly hours. Defendants agree to supplement the main library at each institution according to the recommendations of the institution librarians within six (6) months after the entry of this Decree.

*Consent Decree**Vocational Programs*

The Bureau provides vocational programs at both institutions. These programs function separately from the Bureau of Corrections and operate under the direction of the State Department of Education.

The vocational programs include specifically:

LaGrange

- Auto Body
- Auto Mechanics
- Carpentry
- Drafting
- Industrial Electricity
- Masonry
- Plumbing (to be implemented later)
- Printing
- Radio and T.V. Repair
- Small Engine Repair
- Upholstery
- Welding

Eddyville

- Plumbing
- Masonry
- Auto Body
- Small Engine Repair
- Air Conditioning
- Welding

Defendants agree to maintain functioning courses at full student capacity.

Jobs

All inmates shall be eligible for employment except those inmates disqualified by reason of a disciplinary ac-

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tion, classification or a voluntary election not to work. No inmate shall be discriminated against in the provision of a job by reason of race or religion. No inmate shall be required to take employment where such employment would be contrary to established religious tenets.

Defendants agree to provide meaningful employment. Jobs shall be genuine; no more inmates should be assigned a task then necessary. Jobs shall afford prisoners an opportunity to learn job skills and develop good work habits and attitudes that they can apply to jobs after they are released.

Self-Help Programs

Each institution permits inmate participation in various self-help programs, such as the Jaycees, Alcoholic Anonymons, the Emancipation Program, SPADE and others. Membership in these programs is subject to membership approval upon application by the inmate.

5. FOOD SERVICE

With respect to this Decree, defendants will undertake improvements in several areas. The cycle menu will be modified to include more information which is not reflected on the present menus. This will include listing quantities of food items served, reference to recipe cards, listing fortified beverages and currently served but not listed, and the addition of new food items to the menu. Defendants agree to provide vegetable and fruit items on a daily basis. Also, controls will be placed upon substitutions on the master menu. The Bureau also will employ a nutritionist at each institution, in addition to present personnel, to coordinate such areas as staff and inmate training in food preparation, sanitation, supervision of special diets, and

Consent Decree

the development of record keeping programs for the institutions. The nutritionist shall have a Bachelor's Degree or membership in the American Dietetic Association: institutional experience will be considered in the hiring process.

In addition, within ninety (90) days of entry of this Decree, defendants will develop a plan which sets forth food service operating procedures, including, but not limited to, procedures concerning staff and inmate training in food preparation, sanitation, food storage, supervision of special diets, record keeping, other environmental health concerns in the food service area (e.g., adequate ventilation for the food service facility and the prevention of food/dining room contamination by dripping and/or leaking water or sewage effluent), and the proper feeding of inmates in all satellite feeding operations at both institutions. Such plan shall also consider pay increases for all prisoners employed in the kitchen.

The Bureau has ordered heated food carts for satellite feeding at the Kentucky State Reformatory, has implemented a program to feed protective custody inmates at the Kentucky State Penitentiary in the dining room and has implemented the use of insulated containers to maintain food temperature for feeding inmates in Cell House 3 at the Penitentiary. Measures to eliminate the disposal of wet garbage are being addressed in capital construction projects for both the Penitentiary and Reformatory which will renovate the dining facilities at both institutions.

Custodial staff in food service areas shall engage only in security functions and shall not interfere with food service except as necessary for security.

Within thirty (30) days of entry of this Decree, defendants shall increase the feeding time for meals at the

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Kentucky State Reformatory to eliminate outside waiting lines.

6. DUE PROCESS

A. With respect to disciplinary procedures leading to confinement in punitive segregation, administrative segregation, or the administrative control unit, the following procedures must be followed:

- 1) A copy of the incident report, and a notice of the charges, shall be given to the prisoner at least twenty-four (24) hours prior to a hearing on the matter unless such notice is waived. At the same time the copy of the disciplinary report is given to the inmate, the inmate shall be advised of his right to consult with inmate counsel of his choice at least twenty-four hours prior to the hearing. In addition, the inmate shall be advised of his right to waive the hearing and plead guilty to the charges.
- 2) Until the hearing, every inmate is entitled to remain in his existing status, unless he constitutes a threat to other prisoners, staff members, or himself, which requires pre-hearing detention. If pre-hearing detention is to be ordered by the shift supervisor, such order must be in writing with reasons in support thereof and reviewed and signed by the warden within twenty-four hours. Failure to do so shall return the inmate to his previous status. Any time spent in pre-hearing detention shall be credited against subsequent sentence imposed.
- 3) All hearings on disciplinary charges shall be heard by the Adjustment Committee, composed of an impartial panel, at least one member of which shall

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be non-custody personnel. The hearings shall be tape recorded. (Any panel member shall be disqualified in every case in which he/she has filed the complaint or witnessed the incident, he/she has participated as an investigating officer, he/she is the person charged with the subsequent review of the decision, or he/she has any personal interest in the outcome.) At the hearing, the inmate shall be entitled to the following:

- (a) Opportunity to be present during all phases of the hearing except the deliberations phase;
- (b) Representation by chosen inmate counsel who has had legal aide training and who has been allowed to confer with the inmate at least twenty-four (24) hours in advance;
- (c) Only copies of written information which the Adjustment Committee has provided to the inmate at least twenty-four hours before the hearing may be considered, unless the provision of such documents would be hazardous to institutional safety;
- (d) An opportunity to make a statement and to present documentary evidence;
- (e) An opportunity to call witnesses on his behalf, unless doing so would be unduly hazardous to institutional safety, such reasons for denial to be stated in writing;
- (f) An opportunity to confront and cross-examine his accuser and all adverse witnesses, unless doing so would be unduly hazardous to institutional safety.

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- 4) At the conclusion of the hearing, the Adjustment Committee shall preserve the tape record and prepare a written record, which shall include (a) the Committee's decision, (b) the sentence imposed and the criteria used for imposing the particular sentence, (c) a summary of the evidence upon which the decision and sentence were based, (d) a list of all witnesses, (e) a statement as to whether the sentence may be stayed during an appeal and the reasons for that decision, (f) the date and time of the hearing, and (g) the signatures of all Committee members. A copy of this record shall be given to the inmate.
- 5) If the Adjustment Committee finds the inmate not guilty of the charges, or if an appeal results in the reversal of a finding of guilty, reference to the offense shall be removed from his file.
- 6) Defendants' current appellate procedures concerning disciplinary charges shall be amended to require the Superintendent to respond in writing, with reasons stated for the decision, within twenty days of the Adjustment Committee action on those decisions which are appealed.

B. Inmates transferred to the Kentucky State Reformatory or Kentucky State Penitentiary shall not be confined initially in segregation, administrative segregation, or the administrative control unit unless classified or disciplined to a segregation unit in accordance with the foregoing procedures

7. SEGREGATION

Defendants agree to submit a plan within six (6) months which will address all special types of restricted confine-

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ment at both institutions. Those types of restricted confinement include 1) punitive segregation; 2) administrative segregation; 3) administrative control; and 4) protective custody.

The formulation of the plan will be based on an evaluation conducted by the Bureau of Corrections in light of the American Correctional Association and other comparable standards. In addition, the review and plan will give special consideration to the following issues:

- 1) The minimum and maximum length of confinement for any inmate in each type of confinement;
- 2) The criteria to be utilized by the appropriate institutional body, such as the Adjustment Committee and the Classification Committee, for sentencing and placement in any type of restricted confinement;
- 3) The frequency and character of the review of the status of each person confined in restrictive confinement;
- 4) The criteria to be utilized by the appropriate institutional body, such as the Adjustment Committee or Classification Committee, in determining the continued need for confinement of inmates in restricted confinement; and
- 5) Whether such criteria utilized shall be in writing.

In addition, the Bureau will also evaluate the total physical conditions of those areas of restricted confinement and the programs offered inmates placed in restricted confinement. Accordingly, the defendants will conduct this review in light of American Correctional Association standards and other comparable standards. A plan will be submitted in six (6) months in conjunction with the above stated plan addressing the following issues:

Consent Decree

- 1) Length of confinement within a cell;
- 2) Environmental factors, such as lighting (including natural lighting) ventilation, temperature, and hot and cold running water;
- 3) Food service;
- 4) Programs such as education, recreation, access to the law and regular library, visitation, and correspondence;
- 5) Medical care and mental health care; and
- 6) Social interaction.

The defendants agree to submit a plan within one year which addresses the entire area of providing protective custody to inmates. This plan will consider the removal of the Protective Custody Unit from the Kentucky State Penitentiary and its relocation to another institution. This plan will set forth a complete program for protective custody including location or locations and programs including academic, counselling, recreation, and all other programs available to the general population. Currently certain academic, recreational, and other programs are made available to those inmates confined in the Protective Custody Unit at the Kentucky State Penitentiary separate from the general population. In particular, 1) evening adult education classes are conducted three evenings a week; 2) recreation programs are available two evenings per week in the gymnasium; 3) recreation equipment is available in each area of Protective Custody; and 4) self-help programs are open to Protective Custody inmates on alternate weeks. The defendants agree to house one man per cell in any Protective Custody Unit within six (6) months of entry of this Decree.

Defendants agree that the noon count at the Kentucky State Penitentiary will be discontinued by May 1, 1980.

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Defendants agree that on July 1, 1980, when 40-hour physician coverage per week is available at the Kentucky State Penitentiary, sick call will be conducted twice a week by a physician in the Segregation Unit at the Kentucky State Penitentiary. Defendants will by such date also provide for visits by a staff physician twice a week to the segregation areas at the Kentucky State Reformatory.

Defendants further agree that a physician will periodically review the sick call screening conducted by medical aides at both institutions—at a minimum, this review will be conducted once a month.

The defendants agree to submit a total recreational plan for all segregated housing units within six (6) months of entry of this Decree.

8. ACCESS TO THE COURTS

Defendants agree to implement a plan for maintaining and operating the law library at both institutions upon the advice and recommendations of the respective librarians at each institution and the respective member of the Office for Public Advocacy with the advice and consultation of a competent law librarian within three (3) months. At a minimum, the defendants agree to provide the following:

Federal Materials

- 1) West's Supreme Court Reports, or Lawyer's Edition, 1960 and forward;
- 2) Federal Second Reporter, 1960 and forward;
- 3) Federal Supplemental Reports, 1960 and forward;
- 4) United States Code Annotated, West Publishing Company:
 - (a) Index volumes
 - (b) Constitution of the United States volumes

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(c) Title 18 volumes

(d) Title 28 volumes

(e) Title 42 volumes

- 5) Federal Practice Digest, Second Series;
- 6) Paperback edition—Federal Rules of Civil Procedure, Evidence, Appellate Procedure and Title 28, West Publishing Company;
- 7) Paperback edition—Federal Rules of Criminal Procedure, Evidence, Appellate Procedure and Title 18, West Publishing Company;
- 8) Shepard's United States Citations;
- 9) Shepard's Federal Second and Federal Supplement Citations.

Kentucky Materials

- 1) Kentucky Revised Statutes;
- 2) Kentucky Digest, West Publishing Company;
- 3) Southwestern Report, 2d Series, Kentucky cases, entire series, for the years preceding the publication of S. W. 2d, either Southwestern Reporter of the official reports of the Kentucky Court of Appeals;
- 4) Shepard's Kentucky or Southwestern Reporter Citations.

Miscellaneous Publications

- 1) Corpus Juris Secundum:
 - (a) Habeas Corpus volumes
 - (b) Appeal and Error volumes
 - (c) Constitutional Law volumes.
- *2) Black's Law Dictionary;

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- *3) Cohen, *Legal Research in Nutshell*;
 - *4) Criminal Law Reporter;
 - *5) Israel, *Criminal Procedure in a Nutshell*;
 - *6) Murrell, *Kentucky Criminal Law*;
 - 7) Sokol, *Federal Habeas Corpus*;
 - 8) Prison Law Monitor;
 - 9) Wright, *Federal Courts*;
 - *10) Potts, *Prisoners Self-Help Litigation Manual*;
 - *11) ACLU Handbook, *The Rights of Prisoners*;
 - *12) Bronstein, Hirschkop, *Prisoners' Rights*, 1979
- *Each of the books by which there is an asterisk shall be furnished in at least three (3) copies.

Defendants agree that all volumes will be kept up to date according to the publishers' revisions. In addition, the plan shall include provision for expansion of the law library facilities sufficient to meet the needs of the prisoners.

In cooperation with the Office for Public Advocacy, defendants will hire within four (4) months of the entry of this Decree, three more assistant public advocates, four (civilian) paralegal assistants, and two senior clerk typists to be distributed between the Penitentiary and the Reformatory. The Office for Public Advocacy will continue to serve in a resource capacity for the Bureau and for prisoners when the subject matter goes beyond post-conviction relief.

Inmate legal aides shall be chosen on the basis of an open competitive written and oral examination designed to test legal aides. Inmate legal aides will continue to be given a two-week training program established by the Office for Public Advocacy. The instructors for this program are

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confined to attorneys, judges, and clerks throughout the Commonwealth. The training program for legal aides totals 80 classroom hours. The first week of instruction involves a survey and review of:

- Criminal Law & Procedure
- Civil Procedure
- Domestic Law
- History and Evolution of the Law
- Appellate Courts and Procedure
- Federal Courts
- Preparation of Federal Habeas Corpus Petitions
- Administrative Law with emphasis on parole and probation revocation and disciplinary hearings
- Post Conviction Remedies

The second week consists of instruction in legal research and writing which culminates in a moot court type practice session.

Defendants agree to develop with the Office for Public Advocacy a plan within six (6) months for continuing legal education of legal aides.

Defendants agree that any prisoner capable of assisting other prisoners in the preparation of legal papers or in the prosecution of a lawsuit may do so without fear of disciplinary action, provided that the particular prisoner has been appointed or is seeking appointment by a court to so assist another prisoner. In the alternative, defendants will not oppose the entry of a Decree by this Court permitting the appointment of any prisoner to assist another prisoner, in the defense or prosecution of legal proceedings upon a showing that such prisoner is capable of rendering such assistance. Defendants further agree that

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neither inmate legal aides nor appointed inmate legal assistants will be removed from their jobs or receive any other disciplinary action for filing any legal action against defendants, their agents, or their employees.

9. INMATE MAIL

Plaintiffs and defendants agree that any violation of the plaintiffs' right to send or receive mail shall be resolved in separate proceedings under *Preston v. Cowan*, 369 F. Supp. 14 (W.D. Ky. 1973), and supplemental proceedings therein, Civil Action No. 2381-P(J) (March 26, 1979).

10. RECREATION AND EXERCISE

The Bureau of Corrections will submit to the Court within three (3) months of entry of this Decree a written recreation and exercise program which reflects currently operating programs and possible modification of those programs to include additional activities, particularly hobbies and other leisure time activities. The program shall be designed to meet the needs of the prison population. This plan shall include, but is not limited to, utilization of all dayrooms exclusively for the recreation of the residents of the housing unit in which the dayroom is located. The current recreation program will be maintained at least at the current levels. It consists of the following programs:

*Kentucky State Penitentiary**General Population*

Outdoor weight lifting equipment
Handball court
Swimming pool
Gymnasium for basketball
boxing
volley ball

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Shop #1 for T.V. viewing
Board games
Billiards

Special Needs Area—Cellhouse #3

Ping pong
Television viewing
Reading
Fitness exercise—2 evenings per week
outside cell

Administrative Custody—Cellhouse #3

Board games
Reading
Exercise outside cell 1 hour per day

Protective Custody

Programs described earlier in this document.

Death Row

Weight lifting
T.V. viewing
Reading
Board games
Ping pong
Softball equipment

*Kentucky State Reformatory**General Population*

Tennis
Handball
Softball
Touch football
Gymnasium for basketball

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boxing
weight lifting
jogging
billiards
ping pong

Board games
T.V. viewing
Weekly movies
Intramural program
Horseshoe
Fitness program

Geriatrics

Board games
Movies
T.V. viewing
Croquet
Horseshoe

Protective Custody Unit (Short-term)

Exercise outside cell daily
Board games

Admissions and Orientation

T.V. viewing
Movies
Gymnasium: weight lifting
billiards
ping pong
basketball
Board games—(weekends only)
Horseshoe
Volley ball

*Consent Decree**Special Needs*

Gymnasium twice a week—1 hour

basketball
volley ball
billiards
ping pong
weight lifting

Movies

Board games

Gardening

Defendants agree that upon completion of the new 200-man unit at the Kentucky State Penitentiary in January, 1983, Cellhouses 1 and 2 will no longer serve as housing units for inmates at the Kentucky State Penitentiary. Cellhouses 1 and 2 will be renovated and utilized for inmate programs, some indoor recreation and some administrative functions. Defendants further agree that funds in the amount of \$25,000 have been requested and committed for the repair of the gymnasium roof at the Kentucky State Penitentiary in the first year of the biennium.

Defendants agree to provide a fenced area near Cellhouse 3 within three (3) months so that outdoor exercise will be available to inmates housed in Cellhouse 3 on a scheduled basis. Plans concerning the provisions for outside exercise for Cellhouse 3 will be submitted within six (6) months as part of the overall plan pertaining to the segregated housing units explained above.

11. RELIGION

The defendants agree to make the chapel available to all religious faiths and to permit religious groups to receive religious literature provided that the literature does

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not threaten the security of the institution. The defendants agree to serve one pork free meal per day and to notify the residents of any pork or pork derivative item on all menus. In addition, during the month of October each year, defendants agree to serve two (2) pork free meals per day. The defendants agree to allow all faiths to collect donations for religious purposes on the same basis provided the religious group abides by the institutional rules for collecting donations. The defendants agree to prohibit harassment of any religious group or faith. The issues concerning free exercise of religion by Muslim inmates at the Kentucky State Reformatory shall be litigated separate from this Decree.

12. VISITATION

The Bureau of Corrections encourages and agrees to maintain visitation at least at the current level with minimal restrictions. Any searches of inmates conducted by the Bureau of Corrections shall be conducted in a reasonable manner in compliance with minimal constitutional standards and shall not be conducted in a abusive manner. All searches of female visitors shall be conducted by a female staff member.

Defendants will build a new visitation building at Kentucky State Reformatory which shall, at a minimum, permit informal private communication and opportunity for physical contact. Within three (3) months of entry of this Decree, defendants shall submit a plan to expand and improve present visiting facilities at the Kentucky State Reformatory. After completion of the new 200-man housing unit at Kentucky State Penitentiary, Cellhouses 1 and 2 will be completely gutted and used for program areas such as visitation.

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Defendants shall continue their open visiting policy at Kentucky State Reformatory. Defendants agree to employ two (2) prisoners per housing unit at Kentucky State Reformatory as "runners" whose function shall be to inform prisoners that their visitors have arrived.

Defendants agree to set up a telephone bank for Kentucky State Reformatory similar to the one at Kentucky State Penitentiary.

13. PAROLE

The defendants will provide any inmate who is denied parole or is given a deferment written reasons for such denial or deferment.

In order to assist prisoners seeking parole, the defendants agree to make telephone directories of Kentucky and newspapers from different geographic areas available to prisoners in the library in order to assist the prisoners in finding job and home placements. The defendants further agree to inform every prisoner on parole the proper procedure for restoration of his civil rights.

In conjunction with the provisions on population reduction in this Decree, defendants agree to implement a plan, as soon as possible within six (6) months of entry of this Decree, to address at least the following:

(a) Written rules which will provide strict standards for the issuance of parole violation warrants;

(b) Diversion of technical parole violators to community treatment centers;

(c) Establishment of halfway houses and pre-release centers for prisoners awaiting parole;

(d) Objective criteria for furloughs and re-release programs.

*Consent Decree***14. GRIEVANCES**

The Bureau has implemented a grievance procedure for the Kentucky State Penitentiary and Kentucky State Reformatory. A copy of that program will be submitted to the Court by June 1, 1980, for review. Such plan will include reasonable time standards at every stage of the grievance procedure. Such time standards shall be followed strictly. Failure to meet such time standards shall result in favorable action on the grievance.

15. CASEWORKER SERVICES

The Bureau of Corrections shall build a caseworker building at the Kentucky State Reformatory as proposed in its capital construction budget. Caseworker staff increases are addressed in the staff section.

All classification and treatment officers shall meet the requirements of their job description. This provision shall not apply to present classification and treatment officers.

16. STAFF

The training program for institutional staff is designed by the Bureau of Training at Richmond, Kentucky. Such program ranges from a minimum of a basic orientation program to a two week (40 hour per week) in-depth academy training for custody personnel. Forty hours specialized training is provided at the Academy for certain custody personnel and a minimum of forty hours on the job training for all staff is mandatory. This program will be maintained at least at its current level. On-the-job training within the institution shall not be inconsistent with the Academy training.

Defendants will provide and implement a comprehensive recruitment plan and personnel plan for each institu-

Consent Decree

tion within twelve (12) months. This plan shall include, but is not limited to, affirmative recruitment of minorities and women. The Bureau of Corrections has requested in the 1980-82 budget proposal an increase in staff positions and staff salary including a specific proposal for twenty percent (20%) salary increase for correctional officers in the amount of \$4,223,658. This will provide the basis for the comprehensive recruitment and personnel plan referred to above. This salary increase shall be implemented for all correctional officers when funds are made available for this purpose on a priority basis by the Department of Personnel.

Staff requests made by the Bureau in current budget requests are: (This does not include requests for the Luther Luckett Complex.)

*Kentucky State Reformatory***Custody:**

- 6 Sr. Clerk Typists
- 1 Sr. Clerk Steno

Inmate Support:

- 2 Operating Engineers
- 1 Carpenter Foreman
- 1 Paint Foreman
- 2 Plumber Foremen
- 2 Electrical Supervisors
- 4 Pharmacy Assistants
- 4 Medical Aide II
- 1 Clerk Typist—Visual Care Center
- 1 Dietitian II

Career Development:

- 5 Clerk Typists
- 3 Clerks
- 1 Psychologist II

*Consent Decree**Kentucky State Penitentiary*

Medical and Dietary Services:

- 3 Principal Chefs
- 1 Senior Nutritionist
- 1 Senior Dental Hygienist

Bureau-wide requests which affect the Kentucky State Reformatory and Kentucky State Penitentiary:

- 11 new positions for OJT programs including vocational teachers and typists
- 16 new positions for centralized inmate recreation program.

The engineers and electrical supervisors shall meet the qualifications of their job descriptions and the senior plumber shall be licensed.

With respect to plaintiff's allegations of harassment and brutality by correctional officers at the Kentucky State Penitentiary, the parties have been unable to agree on a mutually satisfactory permanent resolution of this issue. As a result, this issue must be fully litigated and *is not, therefore, included in this Agreed Consent Decree*. The standards of behavior ultimately established shall be applicable at the Kentucky State Reformatory.

At the Kentucky State Reformatory, the defendants will not reduce the current level of correctional officer positions.

At the Kentucky State Reformatory, the defendants will provide a minimum of one (1) guard per floor in each open dormitory and one (1) roving supervisor per unit per shift. Except in emergency situations, the correctional officer will remain in the dormitories.

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17. MEDICAL AND MENTAL HEALTH SERVICES

The Bureau of Corrections provides medical and mental health programs at both the Kentucky State Penitentiary and the Kentucky State Reformatory. Defendants acknowledge that medical care is a prisoner's right and not a privilege. Defendants shall submit a plan within three (3) months for review by the parties to assure immediate attention to emergency medical cases, including, but not limited to, staff training in such procedures. Such plan shall meet American Correctional Association standards for emergency medical care.

With the completion of the Luther Lockett Correctional Complex, which includes a forensic psychiatric hospital, the Bureau will offer a more comprehensive mental health care program for inmates. With the opening of the Luther Lockett Correctional Complex, the Special Needs Unit at the Kentucky State Penitentiary will be closed. All acute care psychiatric prisoner patients will be housed in the new forensic hospital. That facility is scheduled to open on October 1, 1980, with a gradual phase in of inmates. Defendants further agree to develop a plan for providing services to prisoners with non-acute psychiatric and psychological problems within six (6) months of the entry of this Decree.

Both facilities will have forty (40) hours per week physician coverage and twenty-four (24) hours per day telephone coverage by a licensed physician by July 1, 1980. The Bureau has sufficient positions to provide twenty-four (24) hour per day registered nurse coverage at both institutions. Within ninety (90) days from the entry of this Decree, defendants will provide twenty-four (24) hour per day registered nursing coverage.

Consent Decree

Within ninety (90) days from the entry of this Decree, defendants will make adequate provision for dental emergencies and regular dental health maintenance.

Effective upon the entry of this Decree, defendants will guarantee that the services and treatment prescribed by defendants' consulting outside physicians and health personnel are fully provided as described.

Prisoners will be allowed to grow beards for medical reasons upon the direction of a medical doctor.

18. RACIAL DISCRIMINATION

The defendants agree to not discriminate against any inmate on the basis of race, religion, or creed and to develop educational curricula addressing minority cultures which are designed to eliminate the effects of cultural disparities amongst prisoners and staff.

19. PRISON INDUSTRIES

Defendants agree to request that a survey of prison industries be conducted pursuant to the provisions of KRS 338.041 within six (6) months of this Decree. The Bureau will implement these recommendations as soon as its practical after the survey is completed.

20. COMMISSARY

The Board of Directors of the Bureau of Corrections Canteen operation will review pricing practices in the commissaries to determine if prices may be reduced. Inmates may make written recommendations to the Board setting forth any proposals which they wish the Board to consider. The Board will issue a report setting forth its recommendations. The commissaries will sell fresh fruit on an experimental basis for three (3) months to assess its economic practicability.

Consent Decree

21. PERSONAL SUPPLIES

The defendants will provide the prisoners without charge the following items: adequate and suitable clothing, toothbrushes, toothpaste, razor, razor blades, soap (including hypo-allergenic soap as medically necessary), toilet paper, having cream, magic shave and matches. The defendants agree to provide a clean mattress and pillow which meet federal fire safety standards; at least two clean sheets, pillow cases, and at least two towels weekly; and a clean blanket every six (6) months. The defendants agree to provide a metal mirror for each lavatory at the Kentucky State Penitentiary and three mirrors per toilet area at the Kentucky State Reformatory. Within sixty (60) days of entry of this decree, every inmate at the Kentucky State Reformatory will have a pillow.

22. PHYSICAL DISABILITIES

The defendants agree to conduct a study in cooperation with the Kentucky Department of Finance concerning the physical barriers to the handicapped at its institutions in compliance with the Rehabilitation Act of 1973. The defendants agree to submit this study and plan for correcting any deficiency within six (6) months of the entry of this Decree.

23. ENVIRONMENTAL AND HEALTH INSPECTOR

The Bureau will employ an environmental and health inspector who will periodically evaluate and insure the Bureau's compliance with appropriate state codes.

24. TIMETABLES

Any timetable proposed in this Consent Decree would be subject to extensions by the Court upon a showing of

Consent Decree

reasonable grounds for such extension by the defendants. The Court recognizes, however, that lack of funding does not constitute reasonable grounds for failure to enforce constitutional rights.

25. PLAINTIFF COOPERATION

Members of the plaintiff class would be enjoined individually or as a group from any acts which would result in non-compliance with any terms of this consent decree through no fault of the defendants. Members of the plaintiff class would be required to assist the defendants in repairing and maintaining public property in the best condition possible by not damaging or destroying public property in the institutions.

26. SUPPLEMENTAL RELIEF

Upon any motion for Supplemental Relief pertaining to this Decree, that Motion shall take priority and the Court will hear said Motion no later than thirty (30) days after the filing of such Motion and the Court will rule on such Motion no later than forty-five (45) days from completion of the hearing. Provided further that such time limit may be extended by the Court in order to substantially further the interests of the parties.

27. ATTORNEYS' FEES AND COSTS

Defendants agree to pay plaintiffs' counsel reasonable attorneys' fees and costs to be agreed to by the parties or determined to the Court.

This Consent Decree has been approved by the Court with the provision that the Court has reserved the power to modify the Decree after any objections to the Decree have been filed and properly reviewed by the Court.

Consent Decree

So Ordered this 4th day of April, 1980.

(s) Robert Stone ¶ ¶ ¶
Judge
United States District Court
Western District of Kentucky

HAVE SEEN**AGREE TO CONSENT DECREE:**

- (s) Leslie W. Abramson
Leslie W. Abramson
University of Louisville
School of Law
Louisville, Kentucky
- (s) Joseph S. Elder II
Joseph S. Elder, II
- (s) Lloyd C. Anderson
Lloyd C. Anderson
- (s) Alan L. Schmitt
Alan L. Schmitt
Legal Aid Society, Inc.
425 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
Telephone: (502) 584-1254
Counsel for LaGrange Plaintiffs
- (s) J. M. Baker
James M. Baker
- (s) Paul F. Isaacs
Paul F. Isaacs
Office of General Counsel
Department of Justice
State Office Building
Frankfort, Kentucky 40601
Telephone: (502) 564-7554

Consent Decree

- (s) Barbara H. Willett
Barbara H. Willett
Office of Attorney General
Special Prosecutors Division
209 St. Clair Street
Frankfort, Kentucky 40601
Telephone: (502) 564-2348
Counsel for Defendants
- (s) Oliver H. Barber, Jr.
Oliver H. Barber, Jr.
800 Marion E. Taylor Bldg.
Louisville, Kentucky 40202
- (s) Richard H. Burr, III
Richard H. Burr, III
P.O. Box 120636—Acklen Station
Nashville, Tennessee 37212
Counsel for Eddyville Plaintiffs
- (s) Albert Jones
Albert Jones
United States Attorney
- (s) Hancy Jones, III
Hancy Jones, III
Assistant United States Attorney
- (s) Shawn Moore
Shawn Moore
- (s) Adjoa Burrow
Adjoa Burrow
United States Department of Justice
Civil Rights Division
Washington, D.C. 20530
Amicus Curiae

Consent Decree

HAVE SEEN AND AGREE:

- (s) Guy Appleton
Guy Appleton
- (s) John Bennett
John Bennett
- (s) Roy Cline
Roy Cline
- (s) James Fultz
James Fultz
- (s) Clifford Ray Hall
Clifford Hall
- (s) Jimmie Luna
Jimmie Luna
- (s) Donald Moore
Donald Moore
- (s) Jimmy Quinn
Jimmy Quinn
- (s) Donnie Randolph
Donnie Randolph
- (s) Lawrence Smith
Lawrence Smith
- (s) Robert Eugene Smith
Robert Smith
- (s) John E. Reneer
John Reneer
Eddyville Plaintiffs' Committee

Consent Decree

HAVE SEEN CONSENT DECREE
AND APPROVED:

- (s) James M. Thompson
James Thompson
- (s) Walter M. Harris
Walter Harris
- (s) Wilgus Haddix
Wilgus Haddix
- (s) Leslie Brannan
Leslie Brannan
LaGrange Class Representatives

Consent Decree

ATTACHMENT A

LUTHER LUCKETT CORRECTIONAL COMPLEX
(A Complete Institution With All Necessary Support Facilities)

PROJECT	CONTRACT AWARDED	ESTIMATED COMPLETION DATE	COST
97 Bed Forensic Hospital 3 96 Bed Living Units (Pod 1, 2 & 3)	September, 1978	October 1, 1980	\$21,950,000
1 96 Bed Living Unit (4th Pod With Support Services)	May 1, 1980	August 1, 1981	3,400,000
1 96 Bed Living Unit (5th Pod)	August 1, 1980	November 1, 1981	2,815,846
Vocational School	August 1, 1980	November 1, 1981	1,568,000

KENTUCKY STATE REFORMATORY

PROJECT	CONTRACT AWARDED	ESTIMATED COMPLETION DATE	COST
Renovation of Dining Facilities— (Install waste disposal system, electrical improvements, fire and safety improvements, replace coolers and lockers, replace sinks, replace steam kettles, install fly and insect traps, replace floor tile, replace serving lines and grills and purchase new equipment)	September 1, 1980	September 1, 1981	550,000
Fire and Safety Improvements in Administration Building, Dormitories, and Hospital — (Replace doors, improve fire corridors, install fire exits, enclose fire escape from hospital, and install fire and smoke detector systems in all buildings)	April 1, 1980 April 1, 1981	April 1, 1981 July 1, 1982	269,000 1,200,000
Renovation of Cellhouse 4 Locking System, Cellhouse 5 — (A New electrical locking system will be installed in Cellhouse 5)	July 1, 1980	April 1, 1981	750,000

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Attachment A

PROJECT	CONTRACT AWARDED	ESTIMATED COMPLETION DATE	COST
Sewage Disposal System—(The sewage disposal system will be expanded to provide an additional treatment stage for sewage and to handle the disposal of wet garbage from the dining facility)	October 1, 1980	October 1, 1981	200,000
Electrical System—(Replacement of all wiring in the institution which does not meet fire and safety codes)	November 1, 1980	November 1, 1981	1,078,500
Steam Loop—(Complete renovation of the steam distribution system to the remaining areas of the institution which includes prison industries, the vocational education building, and visitation building)	November 1, 1980	November 1, 1981	300,000
Boiler Repair — (Renovation for maintenance purposes of the electrical boiler system)	August 1, 1980	August 1, 1981	250,000
Roof Repair for Gymnasium	July 1, 1980	December 1, 1980	25,000

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Attachment A

Attachment A

FUTURE FACILITIES
(Or Renovated Facilities)

PROJECT	CONTRACT AWARDED	ESTIMATED COMPLETION DATE	COST
Construct or Renovate Correctional Facilities (Such facilities to be designed, constructed and/or renovated to meet the custody needs dictated by the Bureau's classification program)			
Renovation of Two Dormitories, One Each Fiscal Year. The Bureau will renovate two dormitories each subsequent biennium until all dormitories are single rooms. (Convert dormitories to single cell living quarters of 60 sq. ft. with approximately 84 cells per dormitory)	July 1, 1981	Contingent upon contracts	23,000,000
Complete Electrical System — Phase II — (Complete electrical system for remainder of institution to complete balance of project completed in 1979)	October 1, 1980	July 1, 1982	2,074,000
	January 1, 1981	January 1, 1982	812,000

Attachment A

KENTUCKY STATE PENITENTIARY

PROJECT	CONTRACT AWARDED	ESTIMATED COMPLETION DATE	COST
Construction of Visitation Building	January 1, 1981	January, 1983	268,000
Construction of Caseworker Services Building—(Provide office space for caseworkers separate from the dormitories)	January, 1981	January, 1983	182,000
Renovation of Cellhouse 5 — (Complete renovation of Cellhouse 5 and dining facility. The dining area improvements will be similar to that listed for the Kentucky State Reformatory above. The living area will include single cells, new plumbing, electrical and air exchange systems, replace windows and install fire exists)	November, 1979	April 1, 1981	4,195,000

Attachment A

PROJECT	CONTRACT AWARDED	ESTIMATED COMPLETION DATE	COST
Construction of 200 Bed Housing Unit — (A new 200 man cellhouse will be constructed inside the perimeter of the institution to include single cells and all construction requirements recommended by the American Correctional Association)	July, 1980	January, 1983	5,641,000

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 76-0079-P

Consolidated With

Civil Action No. 79-0092-P

JERALD L. KENDRICK, et al., - - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - - Defendants.

JAMES M. THOMPSON, et al., - - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - - Defendants,

UNITED STATES OF AMERICA, - - - - Amicus Curiae

SUPPLEMENTAL PARTIAL CONSENT DECREE

By agreement of the Kendrick Plaintiff Class and the United States of America, *Amicus Curiae*, the following Consent Decree is approved by the Court to resolve, in part, the issues of harassment and brutality being litigated in Civil Action No. 76-0079-P and those cases consolidated therein by the Court. The Consent Decree filed and entered by the Court on May 28, 1980 did not address the issue of guard brutality. Specifically the Consent Decree provided:

With respect to plaintiff's allegations of harassment and brutality by correctional officers at the Kentucky State Penitentiary, the parties have been unable to agree on a mutually satisfactory permanent resolution of this issue. As a result, this issue must be fully liti-

Supplemental Partial Consent Decree

gated and is *not*, therefore, included in this Agreed Consent Decree. The standards of behavior ultimately established shall be applicable at the Kentucky State Reformatory. (Emphasis added)

The philosophy under which this agreement is entered into is to protect the dignity of the individual and the security of the institution. There shall be no harassment or arbitrary treatment of an inmate or his property, nor any use of physical force, chemical or mechanical restraints, except as provided pursuant to this agreement.

Therefore this Consent Decree is now entered pursuant to the following terms:

1. GENERAL PROVISIONS

Without admitting that the defendants have violated any constitutional rights of the plaintiffs, the defendants and plaintiffs submit the following agreement to address some issues of harassment and brutality raised in the above-styled case:

a. The defendants shall within 90 days from the date of entry of this Decree submit to this Court written plans for the implementation of this Decree, including a report of all procedures implemented to date, and setting forth any timetables not included in this Decree to fully implement the proposals made in this Decree.

b. Plaintiffs and *Amicus* shall have 60 days to object to the plan referenced in paragraph (a) above.

c. For any plans proposed in this Decree, the parties shall make an effort to resolve any issues in controversy through negotiation and if the parties are unable to resolve the controversy through this process, the Court shall con-

Supplemental Partial Consent Decree

duct a hearing on these issues. In any event, all plans and procedures developed pursuant to this agreement shall be submitted to the parties for comment and to the Court for approval and incorporation into the Decree.

d. The Court shall retain jurisdiction in this case at least until the plans submitted to the Court are fully implemented.

e. Within ten days of the date of this Decree, defendants shall provide notice to the class providing a copy of this Decree to each plaintiff class member. Within ten days of the entry of this Decree, defendants shall post copies of this Decree in all housing units and by making ten copies of this Decree available in all institutional libraries.

f. Members of the plaintiff class shall have the right to individually submit written objections to the Court within forty (40) days of the signing of this Decree.

g. By entering into this Decree, plaintiffs and members of the plaintiff class are not waiving any rights to pursue individual claims for declaratory, injunctive, and/or monetary relief. The only claims against defendants settled herein are claims for injunctive relief of a general nature, applicable to more than the individual circumstances of a particular plaintiff class member.

h. By entering into this Decree, *Amicus* and plaintiffs have not waived any rights to proceed in any manner to seek further relief and/or remedies if the defendants are unable to comply with any provision of this Decree.

2. The defendants agree that the preliminary injunction entered by the United States District Court, Western District of Kentucky, on March 20, 1980, be made a permanent injunction.

Supplemental Partial Consent Decree

3. In order to develop a competent work force, consistent with this Consent Decree, that is capable of professionally performing the numerous mental and physical demands placed on them, the Bureau of Corrections shall request that the State Department of Personnel develop a selection and monitoring process to be implemented for the hiring of non-clerical correctional personnel that includes exploration of the following:

a. The development of a psychological test for the purpose of determining fitness to work within correctional institutions. The test shall be administered upon the application by an individual for a non-clerical correctional position with the Bureau of Correction.

(1) Prior to the utilization of the psychological test, validation studies and reports on which the test is based will be provided to all counsel of record for review.

(2) The test shall be utilized only upon a showing of validation and the absence of a cultural and racial bias.

b. Within 90 days of the entry of the Decree, the development and implementation by the Bureau of Corrections personnel of general guidelines for interviews of an applicant for a non-clerical correctional position for the purpose of determining fitness to work within a correctional institution.

c. Within 90 days of the entry of the Decree, the development and implementation of a formal evaluation process of non-clerical correctional personnel's job performance, in addition to the present annual review procedure, for the purpose of determining continuing fitness to work within a correctional institution.

d. With respect to the foregoing selection and monitoring process:

Supplemental Partial Consent Decree

(1) If an individual is determined to be unfit after completing the selection process, he/she shall not be employed by the Bureau of Corrections in an institutional setting or,

(2) If an individual is determined to be unfit after completion of any evaluation after hiring, the defendants agree to seek removal of the individual.

Pursuant to the entry of this Consent Decree the Bureau of Corrections will advise all parties within 40 days after the next scheduled personnel board meeting after entry of the Decree of the response of the State Department of Personnel to the request and recommendations of the Bureau regarding the development and implementation of the above mentioned procedures.

4. The Bureau of Corrections is currently reviewing the Training Program for Bureau of Corrections personnel, particularly General Academy Curricula. The Bureau is currently considering General Academy training to include Human Relations Education, Technical Skills, Physical Skills. In addition, the Bureau of Corrections will obtain from the Bureau of Training and implement the following:

a. A basic training course which will train and develop identification, communication, reaction and responsive skills to special offender inmates, (e.g. mentally ill, mentally retarded, emotionally disturbed) by correctional officers.

b. A supplemental training program for annual recurrent training utilizing ACA guidelines as a basis for the development of recurrent training specifically §§4092, 4096, 4098.

Pursuant to the entry of this Decree, the Bureau of Corrections will advise all parties, within 40 days of the

Supplemental Partial Consent Decree

entry of this Decree, of the response of the Bureau of Training.

5. The defendants agree that there shall be no use of physical force, chemical or mechanical restraints, except when the inmate poses a danger to self or others. Further, there shall be no arbitrary, unnecessary, or excessive physical intrusions of an inmate or his property, or removal of property without a receipt; nor any verbal abuse, harassment (including threats of discipline or writeups), or arbitrariness in dealing with inmates or their property, on the part of correctional personnel. The defendants agree to comply with the applicable ACA standards regarding the use of mace including Sections 4165-4171. In addition, the defendants agree to utilize the following guidelines and procedures for the use of mace, restraints, use of force, and shakedown of inmates and inmate cells, effective upon the entry of the Consent Decree.

a. MOVEMENT OF INMATES AND USE OF BATONS AND CHEMICAL AGENTS IN SEGREGATED AREAS

All batons and chemical agents will be stored inside the cage in a locked box. These may only be issued upon orders of the Shift Captain or Shift Supervisor, if no Shift Captain is on duty. The only exception to acting upon orders of the Shift Captain will be in case of an emergency, such as, life threatening situation, escape, and so forth. Immediately after such emergency use, the Shift Captain will be notified. A strict and separate log will be maintained as to the issuance and use of these items.

The duty officer will be notified in advance on use of force or issuance of chemical agents and/or batons in every case.

Supplemental Partial Consent Decree

b. RESTRAINTS

The defendants agree that as to all inmates that the least amount of force necessary to enforce institutional rules will be used and that mechanical restraints will not be used: as a method of punishment; to quiet a noisy inmate; about the head or neck of an inmate; in a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the inmate. The following guidelines will serve as a minimum standard by which defendants will develop their procedures for use of restraints:

(1) Restraints which, when applied, prevent a prisoner from rising from his bed, using toilet facilities, or eating shall not be used on any inmate in a locked cell except in extreme circumstances, such as when the inmate threatens suicide or experiences a violent episode of mental instability, or needs to be completely subdued for a very short period of time after behaving violently towards another person.

(2) Persons in restraints shall be monitored every fifteen (15) minutes by correctional personnel.

(3) Only under the conditions set forth above may restraints be applied, and then for a period not longer than three (3) hours on the order of the Shift Supervisor. Any continued use of restraints beyond the three hour period must be approved by a physician, either personally or by telephone, within this three-hour period. This extension may be for no longer than three (3) additional hours. Authorization for continued use of restraints beyond an initial extension can be given only by a physician based on a personal examination of the inmate and only for reasonable periods not to exceed eight (8) hours. The inmate

Supplemental Partial Consent Decree

may not be continued in restraints beyond any authorized period without a further personal examination and authorization by a physician.

(4) The inmate should be released or placed in lesser restraints unless the physician finds that his behavior mandates otherwise.

(5) A log shall be kept noting the name of the inmate restrained, the reason for the restraint, the type of restraint used, the time of initial restraint, the time of authorization, the name of the physician, the time monitored, the name of the person monitoring, and the time of release.

c. CONTRABAND CONTROL

(1) Body shakedowns shall not be done arbitrarily and in all events shall be done in a manner which respects the dignity and privacy of an individual.

(2) Body strip searches shall not be done arbitrarily, before a person of the opposite sex, and in all events shall be done in a manner which respects the dignity and privacy of the inmate.

(3) Cell searches shall not be done arbitrarily; shall be done in front of the inmate when he is available; shall be conducted in a manner which respects the privacy and property of the inmate; and shall not destroy or disrupt the property of the inmate.

6. The Bureau of Corrections has in the past and will continue to utilize the process of forwarding all extraordinary occurrence reports to the Deputy Commissioner of the Bureau for review and monitoring.

7. The Bureau of Corrections shall, within 90 days after the entry of this Decree, submit a plan to all counsel of

Supplemental Partial Consent Decree

record proposing a monitoring process for the implementation of this Consent Decree.

8. This Consent Decree has been approved by the Court with the provision that the Court has reserved the power to modify the Decree after any objections to the Decree have been filed and properly reviewed by the Court.

So Ordered this 22nd day of July, 1980.

(s) Edward Johnstone
Edward H. Johnstone
Judge, United States District Court

HAVE SEEN

AGREE TO CONSENT DECREE:

- (s) Paul F. Isaacs
Paul F. Isaacs
Office of General Counsel
Department of Justice
State Office Building
Frankfort, Kentucky 40601
Telephone (502) 564-7554
- (s) Barbara H. Willett
Barbara H. Willett
Office of Attorney General
Special Prosecutors Division
209 St. Clair Street
Frankfort, Kentucky 40601
Telephone (502) 654-2200
Counsel for Defendants
- (s) Oliver H. Barber, Jr.
Oliver H. Barber, Jr.
800 Marion E. Taylor Building
Louisville, Kentucky 40202
Telephone (502) 585-2101

Supplemental Partial Consent Decree

- (s) Richard H. Burr, III
 Richard H. Burr, III
 P.O. Box 120636 - Acklen Station
 Nashville, Tennessee 37212
 Telephone (615) 852-5022
Counsel for Eddyville Plaintiffs
- (s) Hancy Jones, III
 Hancy Jones, III
 Assistant United States Attorney
 211 U.S. Courthouse
 Louisville, Kentucky 40202
 Telephone (502) 583-6294
- (s) Shawn Moore
 Shawn Moore
 United States Department of Justice
 Civil Rights Division
 Washington, D.C. 20530
- (s) Adjoa A. Burrow
 Adjoa A. Burrow
 United States Department of Justice
 Civil Rights Division
 Washington, D.C. 20530
- (s) Martha A. Fleetwood
 Martha A. Fleetwood
 United States Department of Justice
 Civil Rights Division
 Washington, D.C. 20530
Amicus Curiae

HAVE SEEN AND AGREE: :

- (s) Guy Appleton
 Guy Appleton

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- (s) John Bennett
 John Bennett
- (s) Roy E. Cline
 Roy Cline
- (s) James Fultz
 James Fultz
- (s) Clifford R. Hall
 Clifford Hall
- (s) Jimmie Luna
 Jimmie Luna
- (s) Donald Moore
 Donald Moore
- (s) Jimmy Quinn
 Jimmy Quinn
- (s) Donnie Randolph
 Donnie Randolph
- (s) James C. Coleman
 James Coleman
- (s) Robert E. Smith
 Robert Smith
- John Reneer

Eddyville Plaintiff's Committee

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-L

JAMES M. THOMPSON, et al. - - - - Plaintiffs

v.

DAVID H. BLAND, et al. - - - - Defendants

UNITED STATES OF AMERICA - - - - Amicus Curiae

MOTION

Come the Kentucky State Reformatory Plaintiffs and the Kentucky State Penitentiary Plaintiffs, by counsel and move this honorable Court to enter the attached Order. Plaintiffs tender a Memorandum in support of this motion concerning visitation.

(s) Joseph S. Elder, II
Joseph S. Elder, II
Counsel for Plaintiffs
623 West Main—Third Floor
Louisville, KY 40202
502/585-2181

(s) Thomas J. Banazynski
Thomas J. Banazynski

(s) Oliver Barber
Oliver Barber
Attorneys for Plaintiffs
635 West Main St.
Louisville, KY 40202
(502) 585-2100

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 76-0079-P

Consolidated With

79-0001-L

79-0092-P

JERALD L. KENDRICK, et al. - - - - Plaintiffs

v.

DAVID H. BLAND, et al. - - - - Defendants

JAMES M. THOMPSON, et al. - - - - Plaintiffs

v.

DAVID H. BLAND, et al. - - - - Defendants

UNITED STATES OF AMERICA - - - - Amicus Curiae

MEMORANDUM IN SUPPORT

MAY IT PLEASE THE COURT:

Inmate Kenneth Boblitt 85718 had his visitation privileges with his mother, Jessie Boblitt suspended at Kentucky State Reformatory on or about 9/27/85 (See attached Exhibit A).

The Administration suspended the privileges on the grounds that Boblitt's mother allegedly brought to the institution one Gerald Eastman, who had previously been barred from the institution for smuggling in contraband (Drugs). Allegedly, Mr. Eastman entered the institution using an ID belonging to Doug Broddie. Inmate Boblitt stated that Mr. Broddie and Mr. Eastman are in fact two

Memorandum In Support

(2) different people and that the individual at Kentucky State Reformatory on September 24, 1985 was in fact Mr. Broddie and not Mr. Eastman.

Inmate Black had the visitation privileges of both his mother and girlfriend (Cindy Preston) suspended after being convicted of possession of contraband.

The Complaint of the inmate class at Kentucky State Reformatory and in particular, Kenneth Boblitt and Kenneth Black, is that suspension of visitation privileges without a hearing violates the open visitation policy under Section 12 of the Consent Decree; is arbitrary and unreasonable; violates the supplemental partial consent Decree, Part 5; the 14th Amendment to the Constitution, due process clause; and further, the visitation regulations (KSR 16-00-01) are so vague as to be arbitrary and unreasonable in their application.

THE CONSENT DECREE

The Consent Decree at Paragraph 12—Visitation, states in part:

VISITATION

The Bureau of Corrections encourages and agrees to maintain visitation at least at the current level with minimal restrictions.

Defendants shall continue their open visiting policy at Kentucky State Reformatory.

The Supplemental Partial Consent Decree states as follows, in part:

Further, there shall be no arbitrary unnecessary, or excessive physical intrusions of an inmate or his property, or removal of property without a receipt; nor

Memorandum In Support

any verbal abuse, harassment (including threats of discipline or writeups) or arbitrariness in dealing with inmates or their property on the part of the correctional personnel.

The current visitation policy at Kentucky State Reformatory is set forth in KSR Practices and Procedures 16-00-01. The grounds for suspension of visitation are set forth at KSR-16-00-01 (K).

1. A visitor may be denied a visit at any time if one or more of the following exists or there are reasonable grounds to believe that:

a. The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including, but not limited to:

- (1) The visitor has a past record of disruptive conduct.
- (2) The visitor is under the influence of alcohol or drugs.
- (3) The visitor refuses to submit to search or who does not have proper identification upon request.
- (4) The visitor is directly related to the inmate's criminal behavior.
- (5) The visit will be detrimental to the inmate's rehabilitation.
- (6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.

Memorandum In Support

- (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the warden.
 - (8) The visitor has previously violated institutional visiting policies.
 - (9) Former employees of the Kentucky State Reformatory will not be allowed to visit inmates unless they have authorization from the Warden prior to the time of the visit.
2. A master log will be kept at the visiting desk of all visitors who have been denied a visit for any of the reasons listed above. A visitor who is denied a visit will not be allowed to visit an inmate for up to six (6) months following the incident. Persons who bring dangerous drugs or contraband into the institution may be denied visits indefinitely, until permission is granted by the Warden. The Duty Officer has the responsibility of denying a visit for the above reasons.
- a. The master log will be furnished to all institutions and updated as required.
3. Any time a staff member feels a visitor should not be allowed admittance for any of the reasons above, the Shift Supervisor and the Duty Officer shall be notified. The final decision will be with the Duty Officer. All decisions will be documented. If it is felt that the individual presents a serious threat of danger to himself or others the Kentucky State Police will be advised of the situation so they may make a decision on whether their interventions is needed.
- a. In the event a visitor is refused admittance, they are to return to the visitors' parking lot. They are not permitted to remain in the lobby as this space

Memorandum In Support

is reserved for the visitors waiting for their visit to be announced.

Several facts are readily apparent.

First, there is no procedure requiring *any* sort of hearing prior to suspensions.

Second, there is no procedure to restore visits.

Third, there is no review by anyone other than the duty officer of the suspension.

Fourth, although there are nine (9) instances of conduct which could lead to suspension of visiting privileges, the blanket authority set forth in 1(a) is so broad and vague as to be arbitrary and unreasonable on its face.

In the case at bar, the bringing of a banned visitor, even if it is true, fits none of the elucidated categories.

The Court should also note that again there is no means to resolve a *factual* dispute (Is Broddie really Broddie or is he Eastman?)

Although the Court is and should be loathe to interfere in the conduct of the internal affairs of the institutions, this there must be balanced against Consent Decree and Constitutional violations. Procedures requiring hearings prior to suspension of visiting and review by an independent authority would not be overly obtrusive upon the institution. In the case of an emergency situation (discovery of contraband) visitation could be suspended, pending a hearing.

ARGUMENT

It is the position of the KSR and KSP Plaintiffs that the Consent Decree establishes a right to visitation and that any restrictions on that visitation must be done in a man-

Memorandum In Support

ner consistent with the 14th Amendment; and must not be applied arbitrarily in violation of the 14th Amendment, and the Consent Decree.

It is evident that once an inmate has a right to visitation, then due process procedures must be followed if that right is to be curtailed.

The case law leaves little doubt that a liberty interest in visitation (a derivative right) can be created by statute regulation or judicial decree *Pugliese v. Belson*, 617 F. 2d 916 (2nd Cir. 1980).

The State of Kentucky by the Consent Decree's endorsement of open visitation has created a protected liberty interest in receiving visits from persons of their choice. It then follows that if a liberty interest is created, then the 14th Amendment imposes limitations on the curtailment of the interest, See *Neal v. Camper*, 647 S. W. 2d 923 (Mo. App. 1983). The Court of Appeals of Missouri held (citing *White v. Keller*, 438 F. Supp. 110 (D. Md. 1977) that:

"in particular a State may create liberty and property interests by granting certain rights and privileges to its citizens. Where a State purports to convert a significant benefit on an individual and in so doing creates a reasonable expectancy that the benefit will be of a continuing nature, any attempt to deprive the individual of the benefit must be accompanied by due process in order to prevent the arbitrary administration of the laws." *Neal* at 925.

Courts have held that restrictions on visitation privileges may be only accomplished "in accordance with the normal disciplinary procedures of the prison" *Laamon v. Helgemore*, 427 F. Supp. (D. N.H. 1977), and must be according to the procedure elucidated in *Wolff v. McDonnell*,

Memorandum In Support

94 S. Ct. 2978 (1974), see *Kozlowski v. Coughlin*, 539 F. Supp. 852 (S.D. N.Y. 1982) (24 hours also written notice, written statement by fact finders as to evidence and reasons for action, right to call witnesses and present documentary evidence).

None of these are available at KSR or KSP. In fact, there is not even a requirement that the Warden or any other prison official review the duty officer's decision to suspend privileges.

It is also important to note to the Court an interesting problem that arises. Unit Court call or disciplinary Court call may suspend visitation privileges of the inmate as punishment *after Wolff* due process hearings, but visitation privileges of an inmate's visitors may be suspended with no due process procedures whatsoever.

The Court should enter the attached Order requiring the Defendants to draft procedures within ten (10) days to set up due process procedures. The Defendants should restore Boblitt's and Black's privileges pending a Hearing in accordance with the Court's opinion.

Respectfully submitted,

(s) Joseph S. Elder, II
Joseph S. Elder, II
Attorney for Plaintiffs
623 West Main St.
Louisville, KY 40202
(502) 585-2181

(s) Oliver H. Barber, Jr.
Oliver H. Barber, Jr.
635 West Main Street
Louisville, KY 40202

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-L

JAMES M. THOMPSON, et al. - - - - Plaintiffs

v.

DAVID H. BLAND, et al. - - - - Defendants

UNITED STATES OF AMERICA - - - - Amicus Curiae

ORDER

On Motion of the Plaintiffs, and the Court being sufficiently advised,

It Is HEREBY ORDERED

That the Defendants shall within ten (10) days herein submit to Plaintiffs a plan setting forth due process procedures including but not limited to notice and hearing before an impartial officer prior to visitation being restricted.

It Is FURTHER ORDERED

That Inmate Boblitt's and Black's privileges are ordered restored upon entry of this Order.

Judge

Date: _____

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-P

JAMES M. THOMPSON, et al. - - - - Plaintiffs

v.

DAVID H. BLAND, et al. - - - - Defendants

UNITED STATES OF AMERICA - - - - Amicus Curiae

AFFIDAVIT

Comes the Affiant, MARY BLACK, and after having been first duly sworn deposes and states as follows:

1. I am the mother of KEVIN BLACK 81258.
2. That on or about December 14, 1985 when my son was in Administrative Segregation arrangements were made to visit with my son.
3. That when I arrived at the Institution on that date I was denied visitation, by visiting room personnel.

FURTHER, Affiant, MARY BLACK, sayeth naught.

(s) Mary Black
Mary Black

STATE OF KENTUCKY }
COUNTY OF JEFFERSON } SS.

SUBSCRIBED AND SWORN to before me by MARY BLACK
this 23rd day of January, 1986.

My Commission expires: 7/25/87

(s) C. Sebastian
Notary Public
State at Large

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-P

JAMES M. THOMPSON, et al. - - - - Plaintiffs

v.

DAVID H. BLAND, et al. - - - - Defendants
UNITED STATES OF AMERICA - - - - Amicus Curiae

AFFIDAVIT

Comes the Affiant, CINDY PRESTON, and after having been first duly sworn deposes and states as follows:

1. I am the fiancée of KEVIN BLACK 81258.
2. I was denied visitation with Mr. Black on the alleged grounds that I brought dangerous contraband into the institution.
3. I deny that I ever brought any contraband into the institution, and I further deny that I have ever used drugs other than prescription drugs nor have I ever purchased drugs other than prescription drugs, nor have I ever sold any drugs.
4. I have been employed by the Jefferson County Board of Education for the past fifteen and one-half years.
5. I have never been suspended from visitation before for any other reason whatsoever.

FURTHER, Affiant, CINDY PRESTON, Sayeth naught.

(s) Cindy Preston
Cindy Preston

Affidavit

STATE OF KENTUCKY }
COUNTY OF JEFFERSON } SS.

SUBSCRIBED AND SWORN to before me by CINDY PRESTON this 23rd day of Jan. 1986.

My Commission expires: 2/8/88

(s) Mary Black
Notary Public
State at Large

AFFIDAVIT

Comes Kenneth Bobbitt, 85718 and being first duly sworn states as follows:

1. That he is a resident of KSR.
2. That on or about October 2, 1985, his visitation with his mother, Jessie Bobbitt, his only regular visitor, was suspended.
3. That his visitation was suspended on the alleged grounds that his mother brought with her Gerald Easton (who had been suspended for contraband) and gained entry to the visitation area with the i.d. of Rory Brody. In fact the gentleman with my mother was Rory Brody and *not* Gerald Easton.
4. That she had been on the visit for 45 minutes when the visitors were approached concerning the identity of Mr. Brody. The visit was terminated at that time, and my mother's visits are still suspended.
5. That her brother, Leslie Bobbitt, is also at KSR and his privileges are also suspended.

s/s Kenneth Bobbitt

Subscribed and sworn before me this 14th day of January 1986.

s/s Joseph Elder
Notary Public
My Commission Expires

**CORRECTIONS CABINET
KENTUCKY STATE REFORMATORY
Commonwealth of Kentucky**

LaGrange, Kentucky 40032

September 27, 1985

Mr. Kenneth Bobbitt
#85718
Kentucky State Reformatory
LaGrange, Kentucky 40032

Dear Mr. Bobbitt:

Please be advised that effective immediately a Ms. Jessie Bobbitt and a Mr. Rory Broddie will not be permitted to visit you while you are incarcerated at this institution. This termination is in regard to an incident on September 24, 1985, when Jessie Bobbitt and a Gerald Easton, who had been terminated from visits on March 18, 1984, tried to gain entrance to our visiting area. Gerald Eastman used the I.D. of Mr. Broddie.

Pursuant to KSR 10-00-01, you may respond to this decision in writing giving an explanation concerning this restricted visit.

Sincerely,
(s) John D. Rees
John D. Rees
Warden

JDR:glr

cc: Deputy Warden Tony Williams
Senior Captain Allie Sharp
Visiting Desk Personnel
Internal Affairs File 84-049

MEMORANDUM

To: Mr. John D. Rees, Warden
 Via: Ms. June Deluca, Procedures Officer
 From: Dwight Smith, Inmate Grievance Counselor 66414
 Date: October 2, 1985
 Subj: Denial of Visits for Mrs. Jesse Bobbitt
 Re: Kenneth Bobbitt 85718

On Tuesday, October 1, 1985, resident Kenneth Bobbitt came to the grievance Office regarding his mother being told at the visiting desk that she could not visit for six months.

I called the visiting desk to confirm and was told that there was a verbal order from Mr. C. Tony Williams, Assistant Warden of Security to deny Mrs. Jesse Bobbitt and a memo to that effect was forth coming.

At 2:40 P.M. I called Mr. Williams and through our conversation was advised that:

1. Mrs. Jesse Bobbitt visits are being denied on the Warden's orders.
2. Mrs. Bobbitt would need to write the warden requesting re-instating her visiting privileges.
3. Reasons for denial: Mrs. Bobbitt brought a male visitor to the institution that had been denied visiting privileges.

Upon relaying this information to resident Bobbitt, he informed me that his mother was not involved with the event that caused for the male visitor being denied visits and that she was unaware that this male visitor had been denied visiting privileges.

Memorandum

In conclusion, in view of the fact that his mother is innocent of any wrong doing and to deny his mother the right to visit is a dire consequence just for her unknown association with the male visitor, and that Mr. Williams stated that you issued the order to deny his mother visits, this informal attempt to document a satisfactory response for the resident and his mother results.

Mr. Rees, we realize that you are very busy with the accreditation processes, however, as this being the mother of the resident, who is the closest of family ties, we would appreciate a response to this as soon as possible.

GRIEVANCE INFORMATION FORM

Grievant's Name Kenneth Bobbitt #85718-L Unit Dorm 2
 Date Filed September 30, 1985 Grievance Number # 1890

A. Issue raised by grievance (circle one):

- ① Individual problem
2. Dorm or unit policy
3. Institutional problem
4. Bureau policy

B. Subject matter of grievance (circle one):

1. Bureau regulations
2. Canteen
3. Computation of time
4. Conflict with staff
5. Disciplinary procedures
6. Food
7. Furloughs
8. Good time
9. Gradual release
10. Housing assignment
11. Grievance mechanism
12. Institutional physical conditions
13. Institutional regulations
14. Job assignments
15. Legal services
16. Mail
17. Medical/Dental services
18. Missing personal property
19. Permission to marry
20. Recreation
21. Religious services
22. Telephone calls
23. Transfers
24. Treatment program assignments
25. Trips off the facility
26. Visiting

*Inf. Formally
 Reviewed*

C. Level of final review (circle one):

1. Resolved informally
2. Grievance Committee
3. Unit Director
4. Superintendent
5. Secretary
6. Outside Review Committee
7. Secretary's Final Decision
8. Withdrawn by grievant

D. Disposition at final level of review (circle one):

1. Granted in full
2. Denied
3. Compromise reached

E. Total number of working days to resolve grievance: _____

**KENTUCKY STATE REFORMATORY
INMATE GRIEVANCE FORM**

Inmate Name Kenneth Bobbitt Number #85718

Housing D-2 Grievance Number #1890

Brief Statement of Problem Improper withholding of
personal property (See attached Sheet)

Action Requested Return of personal watch

Date September 30, 1985

(s) Kenneth Bobbitt

(Grievant's Signature)

Bob Long, Griev. Counselor

Informal Resolution Stage Lt. Prestigiacomo confirmed that Mr. Gregory Smith, the complainant, was found murdered on Friday September 27, 1985 in Louisville. However, Det. Chesser of the Jefferson Co. Police has requested the watch be maintained in a secure area until they can determine if the watch was somehow a contributing factor in the death of Mr. Smith.

(s) Bob Long

(Grievance Counselor Signature)

I am ☐ or am not ☐ satisfied with this informal resolution to my grievance (s) Kenneth Bobbitt 1-11

(Grievant's Signature) (Date)

*Inmate Grievance Form***Grievance Statement****Grievance No. 1890**

Approximately three weeks ago, Grievant contacted the grievance office concerning a watch that had been confiscated by Internal Affairs for, supposedly, it was stolen property. Outside charges were placed and the charges were dismissed for lack of evidence. In fact, the man that was to identify the watch did not show up but stated that the watch was not his to his lawyer. The watch was, or should have been, returned at that time. It was not.

The grievance counselor contacted Lt. Prestigiacomo and was told that once a paper was shown to him proving that the charges had been dismissed, the watch would be returned to the inmate.

The grievant contacted internal affairs after getting a copy of the dismissal from his caseworker and again contacted internal affairs. Lt. Prestigiacomo, he was told, was no longer with internal affairs but had control over his watch. The grievant then contacted Lt. Prestigiacomo and was told that the watch was somehow involved in a recent murder in Louisville and he couldn't have it. He was also told that he could still be prosecuted for the watch.

Attached is a copy of the dismissal on the outside charge for receiving stolen goods. It clearly states that the case is dismissed with "prejudice". This means the case **CAN-NOT** be tried or reindicted again - ever.

The watch belongs to the grievant, the charges are dismissed, the case cannot be retried. Internal Affairs has no right to withhold this personal property.

ACTION REQUESTED

(1) Return of personal property, i.e., one watch, to legal owner, the grievant.

August 22, 1985

RECEIPT

I Lt. Gary Prestigiacomo did confiscate from inmate Kenneth Bobbit 85718-L one 1 WITTNAUER brand watch with ten 10 diamonds or diamond like stones on the sides of the watch, 5 on each side. Mr. Greg Smith, an attorney in Louisville claims the watch as his and states it was stolen from his home during a burglary. The watch is being held in the evidence locker until Mr. Smith and police have an opportunity to examine the watch and determine whether or not it is the same watch stolen from Mr. Smith.

(s) Lt. Gary Prestigiacomo	8-22-85
Lt. Gary Prestigiacomo	Date
(s) Kenneth Bobbit	8/22/85
Kenneth Bobbit 85718-L	Date
(s) Non-legible	8/22/85
Witness	Date

Note: the watch is in working order
at the time I confiscated it.

2008
1890

COMMONWEALTH OF KENTUCKY
REQUEST TO INSPECT PUBLIC RECORDS

RE KRS CH. 61

REQUEST

TO: KSR, Records Dept.
Name of State Agency

DATE 9-23-85

I request to inspect the following document(s): Copy of Release of Detain
for RSP - oldham co.

Number of copies of each document requested @ 10¢ a page: 1 page

Enclosed \$.10 ☐ Check ☐ Money Order ☐ Cash

Kenneth Bobbitt #85,
Signature
Kenneth Bobbitt
Company

D-3
Address

Phone

RB EO

DISPOSITION

The following disposition was made of the above request: Copy attached

Eric Wheeler
Signature of Custodian

Agency

Amount Received

Date

Am 1840

BEST AVAILABLE COPY

Clt. No. 712200 Case No. 85-73-45
Court

COMMONWEALTH OF KENTUCKY, VS.

D.O.B.

BOBBITT, KENNETH L.

Address KSR

City and State LAFARGE, KY. 40032

Attorney

Arrest Date Tape No.
Charges RECEIVING STOLEN PROPERTY (514.110)

Witness

Abstract Mailed

Bond

Date

Proceedings

07-05-85

Warrant of Arrest released, OCS
ORDER FOR APPEARANCE OF PRISONER
RELEASED TO OCS
Assigned 07-10-85-3 2:30 p.m.

7-10-85

Dismiss with
514.110 with
Prejudice
Paul W. Jones

Receipt No.

AOC-79-920

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

79-0092-P and
79-0001-L

JAMES THOMPSON, Et Al., - - - - *Plaintiffs*

v.

DAVID H. BLAND, Et Al., - - - - *Defendants*
UNITED STATES OF AMERICA - - - - *Amicus Curiae*

DEFENDANTS RESPONSE TO MOTION RE: VISITATION

Come the Defendants, by and through Counsel, and respond to Plaintiffs Motion Regarding Visitation as follows:

The Plaintiffs have filed a Motion alleging that the Defendants policy of denying visits to certain persons is a violation of the Consent Decree and a violation of due process rights.

The Defendants deny both allegations and claim that the Plaintiffs have failed to state a claim upon which relief can be granted by this Court and the Motion should be denied.

The obligations of the Corrections Cabinet pursuant to the Consent Decree regarding visitation are as follows:

The Bureau of Corrections encourages and agrees to maintain visitation at least at the current level with minimal restrictions. Any searches of inmates conducted by the Bureau of Corrections shall be conducted in a reasonable manner in compliance with minimal

Defendants Response To Motion Re: Visitation

constitutional standards and shall not be conducted in an abusive manner. All searches of female visitors shall be conducted by a female staff member.

Defendants will build a new visitation building at Kentucky State Reformatory which shall, at a minimum, permit informal private communication and opportunity for physical contact. Within three (3) months of entry of this Decree, defendants shall submit a plan to expand and improve present visiting facilities at the Kentucky State Reformatory. After completion of the new 200-man housing unit at Kentucky State Penitentiary, Cellhouses 1 and 2 will be completely gutted and used for program areas such as visitation.

Defendants shall continue their open visiting policy at Kentucky State Reformatory. Defendants agree to employ two (2) prisoners per housing unit at Kentucky State Reformatory as "runners" whose function shall be to inform prisoners that their visitors have arrived.

Defendants agree to set up a telephone bank for Kentucky State Reformatory similar to the one at Kentucky State Penitentiary.

The Plaintiffs allegations are that the Cabinet's denial of visitation by visitors is a violation of the Consent Decree because it fails to permit open visitation according to the Consent Decree. What the Plaintiffs fail to remember is that the policy cited by the Plaintiffs as violative of the Consent Decree was the exact same policy that was in place at the signing of the Consent Decree. Attached to refresh the Plaintiffs and Court's memory are the Response and Interrogatories on visitation filed in September, 1979. The questions were as follows:

Defendants Response To Motion Re: Visitation

Q. 97. Describe the visitation rights of prisoners, including the frequency and length of visits permitted, the individuals or classes permitted to and prohibited from visiting, the number of individuals permitted to visit at any one time and the number of individuals permitted to be on the prisoner's visiting list at any one time.

A. 97. See Attachment 17.

The relevant portion of Attachment 17 is included as Exhibit A. The Internal Management Directive applicable at the signing of the Consent Decree is attached and marked as Exhibit B. The present Kentucky State Reformatory Policy and Procedure reflects the previous Internal Management Directive 403 which listed the grounds for which visitors could be denied access to the Reformatory. The present policy and procedure in place at the Kentucky State Reformatory is almost identical to the policy and procedure that was in place at the signing of the Consent Decree in 1980 with some additions. The Consent Decree requires the Cabinet to encourage and maintain visitation at least at the current level with minimal restrictions. The Defendants have not violated that portion of the Consent Decree. No additional rights were established by the signing of the Consent Decree. No due process hearings were held for denial of visitation in 1980 when the Consent Decree was signed nor are any required today. Raising this issue some six (6) years subsequent to the signing of the Consent Decree when the policy is identical to that in 1980 is highly inappropriate and improper and does not state a claim for relief.

The case law is clear that persons do not have the right to visit penal/correctional institutions when they consti-

Defendants Response To Motion Re: Visitation

tute a threat to the security of the institution. The institutions have the right to deny those visits. *Brisbon v. Lane*, 554 F. Supp. 426 (N.D. ILL 1983) The Court determined it was appropriate to deny visitations when a person constituted a security risk even though actual charges were not proven against that individual. The denial of visits is a judgment call to be left to the expertise of prison management. *Weaver v. Jago*, 675 F. 2d 116 (6th Cir. 1982). Prison inmates have no absolute constitutional right to visitation and limitations may be imposed if necessary to meet legitimate penological objectives. *Bellamy v. Bradley*, 729 F. 2d 416, 420 (6th Cir. 1984). *Bell v. Wolfish*, 441 U.S. 520 (1979).

The Defendants admit they have prohibited Ms. Jesse Bobbitt from visiting. Mrs. Bobbitt was suspended from visitation for a period of six (6) months on September 27, 1985 because she was involved in an attempt to bring a visitor to the institution who had been previously suspended from visiting the Kentucky State Reformatory because he had been involved in the introduction of dangerous contraband into the institution. The Cabinet did not deny visitation to Ms. Black, the mother of Kevin Black. The Cabinet did suspend Ms. Cindy Preston's visits when the inmate she was visiting was subsequently discovered with contraband after completion of the visit.

These constitute legitimate security risks and the Cabinet has the authority to deny their access to visiting. There is no requirement for the Cabinet to provide any policies and procedures as requested by the Plaintiffs and the relief sought for is inappropriate and is not required by the Consent Decree and therefore should be denied.

Defendants Response To Motion Re: Visitation

Respectfully submitted,

(s) Barbara Jones
 Barbara Jones
 Linda G. Cooper
 David A. Sexton
 Corrections Cabinet
 Office of General Counsel
 State Office Building
 5th Floor, Room 500
 Frankfort, Kentucky 40601
 502/564-2024
 Counsel for Defendants

NOTICE

Please take notice that the foregoing Response to Motion Re: Visitation was mailed, postage prepaid, this 21st day of February, 1986 to the Clerk of the United States District Court, Western District of Kentucky, Federal Building, Paducah, Kentucky 42001, for filing and is to be considered at the convenience of the Court.

(s) Barbara W. Jones
Counsel for Defendants

UNITED STATES DISTRICT COURT

79-0092-P and
79-0001-L

JAMES THOMPSON, Et Al., - - - - *Plaintiffs*

v.

DAVID H. BLAND, Et Al., - - - - *Defendants*
UNITED STATES OF AMERICA - - - - *Amicus Curiae*

ORDER

Upon Motion of Plaintiffs, Defendants Response thereto, and the Court being sufficiently advised,

It Is HEREBY ORDERED Plaintiffs' Motion Re: Visitation be DENIED.

So Ordered this ____ day of _____, 1986.

Judge

United States District Court

EXHIBIT A

8. Those persons traveling a long distance may request in advance by letter or telephone call permission for an extended visit.
9. Visitors will present proper identification and register at the Visiting Desk. A visiting card will be maintained on each resident to record the number of visits and to document information for special visits. (parolees, etc.)
10. Any exceptions to the above must be approved by the Deputy Warden/Treatment, or his designate, except on weekends and holidays when the Duty Officer shall be contacted.

II

1. Persons on Parole or Conditional Release must have permission from their Parole Officer and the approval of the Warden or his designate.
2. Persons with previous felony convictions must have prior approval from the Warden to visit a resident.

III

1. Visits may be excluded by the Warden or his designate when there are reasonable grounds to believe that:
 - A. The visitor's presence in the Institution would constitute a clear and probable danger to the Institution's security or interfere with the orderly operation of the Institution.
 - B. The visitor has a past record of disruptive conduct.
 - C. The visitor is under the influence of alcohol or drugs.
 - D. The visitor refused to submit to search, if requested or to show proper identification.

Exhibit A

- E. The visitor is directly related to the inmates criminal behavior.
- F. The visit will be detrimental to the inmate's rehabilitation.
- G. The visit is from a former resident currently on parole and who does not have the approval of the Parole Officer.
- H. The visitor is a former resident who has left by maximum expiration of sentence.

EXHIBIT B**403.00 GENERAL INMATE VISITING PROCEDURE****403.01 INTRODUCTION**

The Bureau of Corrections feels that it is essential that individual offenders develop and maintain healthy family and community relationships. Due to the difficulties and frustrations in a correctional setting, positive relationships with visits from family, friends, and community groups are to be stressed as a factor in maintaining the morale of the individual offender and motivate him to positive aspirations. Visits are to be utilized for developing closer relationships between staff, family members and community groups for the purpose of more effective program planning.

403.02 GENERAL PROCEDURES

Recognizing that each institution has different physical facilities and programs, regulations regarding the number of visitors allowed to visit an inmate at any one time, and the frequency, duration and priority of the visit, and visiting hours will be established by the superintendent. Such regulations shall be forwarded to the Commissioner for review and approval. These regulations must meet the following minimum requirements:

- (A) Daily visiting hours (Exceptions to daily visiting schedule may be made in the case of inmates living in minimum security situations.)
- (B) The approved visiting list shall include a sufficient number of visitors to ensure that the

Exhibit B

inmate has the opportunity to maintain contact with family and friends.

- (C) No discrimination based solely on race, creed, sex, marital status or previous felony conviction.

403.03 In order to coordinate the visiting process and avoid delays, each institution shall compile and maintain an approved visitor's list for each inmate. It will be the responsibility of the inmate's caseworker to authorize any charges in it during the period of incarceration.

403.04 It is recognized that certain visitors should be excluded. A visitor may be excluded by the superintendent or his/her designate when there are reasonable grounds to believe that:

- (A) The visitor's presence in the institution would constitute a clear and probable danger to the institution's security or interfere with the orderly operation of the institution.
- (B) The visitor has a past record of disruptive conduct.
- (C) The visitor is under the influence of alcohol or drugs.
- (D) The visitor refuses to submit to search, if requested to do so, or show proper identification.
- (E) The visitor is directly related to the inmate's criminal behavior.
- (F) The visit will be detrimental to the inmate's rehabilitation.

Exhibit B

(G) The visit is from a former resident currently on parole and who does not have the approval of the parole officer.

(H) The visitor is a former resident who has left by maximum expiration of sentence.

403.05 In all cases where a person is denied visiting rights or removed from a visiting list by the caseworker or other designated official, appropriate documentation shall be placed in the inmate's institutional folder. Notice will be given to the inmates.

403.06 Attorneys and clergymen in order to have a private meeting with inmates shall provide prior notice to the institution. Otherwise they will visit under normal visiting procedures.

Clergymen who present themselves at an institution or facility must produce evidence that they are in good standing with a recognized religious faith in order to be allowed access to the institution for the purpose of visiting inmates. However, the superintendent shall determine the number of inmates that a clergyman or attorney may visit at any one time. Such determinations shall be made in accordance with space, time, security and program considerations.

403.07 Consideration should also be given to the distance visitors that are required to travel to visit an inmate. Persons required to travel long distances may request permission, in advance by letter or phone from the superintendent for extended visits.

403.08 Visitors and inmates are not permitted to exchange any objects during the course of visits except with the visiting area officer's approval.

Exhibit B

403.09 Hospitalized inmates shall have visiting privileges consistent with the security requirements and with the consent of medical authorities.

403.10 Special visits may be authorized by the superintendent or his/her designate. These persons include former or prospective employers, parole officers, volunteers, or other sponsors. Visits in this category serve such purposes as assistance in release, placement, counseling, and discussion of acute family problems. Additionally, inmates will be permitted visits of this type to resolve problems surrounding the inmate's business or family financial problems.

403.11 Visiting may be partially curtailed or totally suspended during a state of emergency when so declared by the superintendent. However, any such declaration by the superintendent shall be in effect for a maximum of 48 hours unless extended by the Commissioner.

403.12 Institutional rules and regulations regarding visiting procedures as well as prohibition in regard to contraband must be posted in a conspicuous place near the visiting area, or provided in brochure form to visitors at the time of visitation.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-P

JAMES M. THOMPSON, et al., - - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - - Defendants
UNITED STATES OF AMERICA - - - - Amicus Curiae

ORDER—Entered April 18, 1986

This case is before the court on plaintiffs' motion concerning visitation.

In order for this court to render a fair and accurate decision on this matter, it is necessary that this court review all policies and procedures of the Kentucky State Reformatory concerning visitation and revocation of visitation rights. In particular, this court requests a copy of KSR 10-00-01, which is mentioned in a letter to Kenneth Bobbitt concerning a decision to revoke visitation of Jesse Bobbitt and Gerald Easton. Accordingly,

IT IS ORDERED that defendants file with this court copies of all prison policies and procedures concerning visitation and the revocation of visitation rights on or before May 8, 1986.

Dated: 4-18-86

(s) Edward H. Johnstone
Edward H. Johnstone, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. C79-0092-P

JAMES M. THOMPSON, Et Al. - - - - Plaintiffs

v.

DAVID H. BLAND, Et Al. - - - - Defendants
UNITED STATES OF AMERICA - - - - Amicus Curiae

DEFENDANTS COMPLIANCE WITH COURT ORDER

Come the Defendants, by and through Counsel, and hereby files in accordance with the Order of the Court on April 18, 1986, a copy of the Corrections Policy and Procedure 16.1 — General Inmate Visiting Procedures (Effective September 28, 1981). This policy was formerly Internal Management Directive 403. Also attached in accordance with the Court Order is Kentucky State Reformatory Procedure 16-00-01 — Visiting Regulations (5th Revision, Effective September 30, 1985). The particular page that would address the revocation of visits is contained on page 17 of the Kentucky State Reformatory Procedure.

For the Court's information both the Corrections Policy and Procedure and the Kentucky State Reformatory Policy and Procedure have been filed with the Court in our Notice of Updates and are part of the Court record.

Defendants Compliance With Court Order**Respectfully submitted,**

(s) Barbara W. Jones
 Barbara W. Jones
 Linda G. Cooper
 David A. Sexton
 Corrections Cabinet
 State Office Building
 5th Floor, Room 500
 Frankfort, Kentucky 40601
 502/564-2024
 Counsel for Defendants

NOTICE

Please take notice that the foregoing Defendants Compliance with Court Order was mailed, postage prepaid, this 25th day of April, 1986 to the Clerk of the United States District Court, Western District of Kentucky, Federal Building, Paducah, Kentucky 42001, for filing and is to be considered at the convenience of the Court.

(s) Barbara W. Jones
 Counsel for Defendants

CORRECTIONS POLICIES AND PROCEDURES

Commonwealth of Kentucky

Policy Number 16.1 Date Issued August 28, 1981

Total Pages 8 Effective Date September 28, 1981

References

Subject General Inmate Visiting Procedure

This policy was previously IMD 403—General Inmate Visiting Procedure.

403.00 INMATE VISITS

403.01 *Purpose and Scope*

The Kentucky Department of Corrections encourages visits to inmates by family and immediate friends to maintain morale and contact with the community. Relationships with significant others are to be promoted and facilitated by each institution as visits are important to the inmate and his success within the community upon release.

403.02 *Visiting Facilities*

- A. The Warden or Superintendent shall arrange the visiting areas to be as comfortable as possible for the inmate and visitors but shall at all times provide for adequate supervision and security of the visiting area. If adequate space and funding is available, the Warden or Superintendent shall have a portion of the visiting area equipped and set up to provide activities for the children.
- B. Regular visiting areas should be arranged so that personal contact is permitted but that the

Corrections Policies and Procedures

entire visiting area, visitors and inmate shall be continuously supervised at all times.

- C. when possible, outdoor visiting areas may be provided but with visiting always inside the security perimeter and under the same degree of supervision as described in A and B in the above.

403.03 *Visiting Times*

Each Warden or Superintendent shall establish visiting times. At a minimum, the Warden or Superintendent shall permit visiting on Saturday, Sunday or holidays except for emergency conditions. Where space and staff resources permit, the Warden or Superintendent may establish evening and/or daily visiting hours.

403.04 *Frequency and Number of Visitors*

- A. The Warden or Superintendent must allow each inmate the opportunity to visit a minimum of eight hours per month. Visiting limitations and restrictive length of visits will be only to avoid overcrowding. Individual visitors may be barred for cause as per Paragraph 403.06 below.
- B. The Warden or Superintendent may establish consistent guidelines as to the maximum number of people, the number of visiting hours per month and the number of visits per visitor which an inmate may receive when based on space allocation and staff resources or if it is a threat to security and order of the institution.

Corrections Policies and Procedures

- C. Exceptions may be made to any local guidelines, when special circumstances arise, such as distances visitors must travel, frequency of visits for a particular inmate, health problems of inmate or visitor, etc.
- D. Care should be taken to schedule visiting in such a manner that it will interrupt inmate work and programming schedules as little as possible.

403.05 *Visitors Allowed*

- A. Regular visitors—Regular visitors are defined as being immediate family members, other close relatives and immediate friends over the age of seventeen (17). Under normal conditions, any of the above can visit unless visits could reasonably create a threat to the security and order of the institution.
- B. Persons under age of eighteen (18)—Children under age of eighteen (18) may not visit unless accompanied by a responsible adult who is a member of the child's immediate family or have written parental or guardian permission. Such permission must be fully documented. Children shall be kept under supervision of adult or children's program at all times.
- C. Business Visitors—No inmate is to engage *actively* (operate a business from within the institution) in a business or profession while incarcerated. A special visit may be authorized for business purposes where a decision has to be made that substantially affects the assets or prospects of a business and/or property.

Corrections Policies and Procedures

- D. Special Visitors—Attorneys, clergymen, prospective employers, sponsors, parole advisors, volunteers, etc., may visit to assist in legal matters, family problems, release planning, etc. All must visit during regular visiting hours unless a special problem or circumstance exists that requires visiting hours be otherwise. Attorneys and clergymen who desire private or special meetings are required to give twenty-four (24) hour notice.

403.06 *Visitors Excluded*

Certain visitors who are either a threat to the security or order of the institution or nonconducive to the successful re-entry of the inmate to the community may be excluded. These are, but not restricted to:

- A. The visitor's presence in the institution would constitute a clear and probable danger to the institution's security or interfere with the orderly operation of the institution.
- B. The visitor has a past record of disruptive conduct.
- C. The visitor is under the influence of alcohol or drugs.
- D. The visitor refuses to submit to search, if requested to do so, or show proper identification.
- E. The visitor is directly related to the inmate's criminal behavior.
- F. The visitor is currently on probation or parole and does not have special written permission

Corrections Policies and Procedures

from both his or her Probation or Parole Officer and the institutional Superintendent.

403.07 Identification

- A. Each visitor except for children under the age of eighteen (18) must show proof of identification.
- B. No visitor may visit more than one inmate unless so authorized by the Warden or Superintendent.

403.08 Inmates in Detention

- A. Inmates in disciplinary segregation may be allowed normal visit times and hours but the visits may be in a restricted setting.
- B. All other inmates in detention should be allowed normal visiting hours but may be restricted to a more secure visiting area if a threat to the security of the institution.
- C. Inmates in detention shall be observed at all times and may be placed in restraints if a threat to the institution, other or himself.

403.09 The Visit

- A. Generally, inmates should be allowed physical contact such as holding hands, etc., kissing, embracing, etc., are ordinarily permitted within the bounds of good taste but only at the beginning and end of the visit.
- B. Any sexual stimulation or activity is strictly prohibited.

Corrections Policies and Procedures

- C. While in visiting area, inmates are subject to rules and regulations of the Department and the Institution concerning visits.
- D. Inmates may be frisked or strip searched before and after visits, and may be restricted to few or no articles in their possession while in the visiting area. (See Internal Management Directive 313. Search)
- E. Children are to be under control at all times and are the responsibility of the accompanying adult.
- F. Staff shall supervise every inmate visit to prevent passage of contraband and to insure the security and order of the institution.
- G. Staff should treat visitors in a courteous and positive manner at all times. Instruction should be given in a firm but positive manner.
- H. Staff should see that visits are conducted in a quiet and orderly manner. Visitors who become disruptive or will not follow visiting guidelines may be requested to leave at any time. Visits may be terminated if visiting guidelines are not adhered to or inmate or visitor becomes disruptive.

403.10 General Visiting Procedures

- A. Each visitor should be identified and required to sign in if over the age of ten (10). Those under the age of eleven (11) should be signed in by accompany adult.
- B. Staff may require a visitor to submit to personal search as per Internal Management Di-

Corrections Policies and Procedures

rective 313 including search of personal property, as a condition of allowing or continuing a visit.

- C. Each visitor eighteen (18) years of age and over shall have access to a copy of the visiting procedures and/or guidelines. Each will be asked if they understand the visiting rules and regulations before beginning a visit.
- D. The visiting room staff may not accept articles or gifts of any kind from inmate or visitor, except packages which have had prior approval from the Warden or Superintendent. The Warden or Superintendent may allow a visitor to leave money with a designated staff member for deposit in inmate trust fund. Visitor and inmate are to receive receipts.
- E. All institutions shall post a copy of Kentucky Revised Statutes 520.050 and 520.060 which prohibits contraband and gives the criminal penalty for such.

403.11 *General Dress Code*

- A. Each institution may require a dress code for visitor and/or inmate. Such dress code may address the type of clothing as to cover shoulders, midriff, chest area, legs, etc.
- B. Dress code should conform as close as possible to accepted dress within the community and should require clothing to be in good taste so as not to offend other visitors and/or inmates.

*Corrections Policies and Procedures*403.12 *Penalty for Violation of Visiting Regulations*

Any act or effort to violate the visiting guidelines and/or laws may result in disciplinary action against the inmate, which may include the denial of future visits, possibly over an extended period of time. Moreover, criminal prosecution may be initiated against the visitor, the inmate or both in case of criminal violation.

KENTUCKY STATE REFORMATORY PROCEDURES MEMORANDUM

Number: KSR 16-00-01—Rev. 5

Date Issued: September 30, 1985

Effective Date: September 30, 1985

Subject: Visiting Regulations

STATEMENT OF POLICY AND PURPOSE

Although administrative staff reserves the right to allow or disallow visits, it is the policy of the Kentucky State Reformatory to respect the right of inmates to have visits in the spirit of the Court decisions and the Consent Decree, while insuring the safety and security of the institution. The following are the procedures to be enforced in regard to all types of visits.

REFERENCE

American Correctional Association Standards for Adult Correctional Institutions, 1981, Sections 2-4381, 2-4382, 2-4383, 2-4384, 2-4385, 2-4386

American Correctional Association, Correctional Law Project, Model Correctional Rules and Regulations, 1979

Corrections Policies and Procedures Chapter 16.1, 9.8, 9.6

PROCEDURE

A. Daily Opening and Closing of the Visitation Building

1. The Visiting Room Officer will be responsible for the daily opening and closing of the Visitation Building.
 - a. The Visiting Room Officer will obtain the keys from the Box 12 Officer and will enter through the outside gate, escorting the Visiting Room Clerks.

Kentucky State Reformatory Procedures Memorandum

- b. The officer will open the inmate entry/exit doors and proceed to the gate for the fenced walk, unlock the gate, and return to the building.
- c. At the end of normal visitation hours, the officer will search the building to ensure that no inmate remains.
- d. The officer will supervise inmate janitors who will clean the area at the end of visitation hours.
- e. The officer will then strip search the inmate janitors and escort them to the inmate entry/exit gate for admittance to the yard.
- f. The officer will lock the inmate entry/exit gate, return to the building, and secure the inmate entry/exit doors.
- g. All Visiting Room staff will exit the building. After securing the entry doors, the Visiting Room Officer will return the keys to the Box 12 Officer for reissue on the next working day or for night visits on appropriate evenings.
- h. The officer will then escort the Visiting Room staff to the Chief Clerk's Office.

B. Visiting Building Visits

1. Visits will be conducted seven (7) days a week. Visitors will be allowed to enter the institution beginning at 8:30 AM and will continue to be admitted into the institution until 2:30 PM. By 3:00 PM all visitors will be off institutional grounds.
 - a. Inmates assigned to the A & C Unit will be allowed only inside visits which will take place on weekends and holidays due to testing and

Kentucky State Reformatory Procedures Memorandum

classification processes that are conducted in the A & C Unit.

- b. Inmates whose job assignments are SU (Quit) or inmates housed in Segregation and Administrative Segregation shall be allowed only inside visits on days other than weekends and holidays.

- (1) When an inmate is assigned to either Segregation or Administrative Segregation, he shall be allowed one (1) telephone call to notify his family of his change of status, thus effecting a change in his visiting days.
- (2) Exceptions to the restriction of visiting days for the above inmates may be authorized by the Asst. Warden for Security prior to the visitor(s) arrival at the institution, or in emergency situations, by the Shift Supervisor or Duty Officer at the time of the arrival of the visitor(s) at the institution.

- 2. There will be no visit list maintained which specifies who may visit an inmate. However, the Visiting Desk will keep a list of persons who have visited an inmate. The list is private information and unavailable to visitors. No visitor will be refused the opportunity of a regular Visitation Building visit unless they fall under the criteria of SECTION J. of this procedure.
- 3. An inmate is allowed three (3) separate visits in the Visiting Building per week (Sunday through Saturday). Holiday visits count as one (1) of the three (3) weekly visits.
- 4. An inmate is allowed to have a maximum of three (3) adult visitors (adult being defined as over 18

Kentucky State Reformatory Procedures Memorandum

years of age) per visit. There will be no limit on the number of children allowed per visit, but they must remain under the supervision of an adult visitor who will prevent any major disturbances by children in the Visiting Building. If disruption persists, the visit will be terminated. This will be at the discretion of the Visiting Building Officer. No visitors under the age of 18 will be allowed to visit without being accompanied by an adult, unless the visitor is married to the inmate and can provide a copy of the marriage license.

- 5. Visits will be one and one-half (1½) hours in length on normal working days (Monday through Friday). Visits on Saturday, Sunday and holidays will be one (1) hour in length. In the event of a large volume of visitors, the Shift Supervisor has the authority to decrease the amount of time a visit will last. This shall be documented and distributed to all areas of concern (Warden, Deputy Warden/Operations, Asst. Warden/Security, Senior Captain, Captains Office File, Duty Officer).
- 6. All visitors are subject to a frisk search and a strip search upon entrance to the Reformatory grounds. It will be at the discretion of the Warden, the Deputy Warden/Operations, Asst. Warden/Security, or the Duty Officer to determine if a strip search is justified. If it is deemed necessary, the visitor will be asked to submit to a strip search.
 - a. If a visitor is to be strip searched, he/she will be asked to sit in the waiting room, but will not be given a reason.

Kentucky State Reformatory Procedures Memorandum

- b. If the visitor agrees to the strip search, he/she will be escorted to the search room adjacent to the Visiting Desk and strip searched by two (2) Reformatory employees of the same sex as the visitor.
- c. Prior to any strip search of a visitor, the visitor shall be requested to consent to the search by signing the appropriate search consent form (adult or child). See Attachments I and II.
- d. The Visiting Desk Clerk will contact the Captains Office for assistance.
 - (1) Should a body cavity search be required, the search will be conducted in the institutional hospital by institutional medical staff.
 - (a) If no contraband is found, the visitor will be allowed to visit and an incident report will be made by the staff involved in the incident.
 - (2) If contraband is found, the individual will be detained until the Kentucky State Police are notified and arrive at the institution to take charge of the subject.
 - (3) The chain of evidence will be closely kept at all times.
 - (4) The visitor will be restricted from visiting any inmate in the future. See SECTION J.
 - (5) An Extraordinary Occurrence Report will be prepared by the Captains Office Clerk and initialed by staff involved in accordance with KSR 01-00-14.
- e. If the visitor refuses to be strip searched, the following steps will be required.

Kentucky State Reformatory Procedures Memorandum

- (1) Kentucky State Police will be notified of the situation.
- (2) The visitor will be detained until the Kentucky State Police arrive at the institution.
- (3) On authorization from the Kentucky State Police, a strip search will be performed by two (2) Reformatory employees of the same sex as the visitor.
- (4) If the Kentucky State Police do not give authorization for the strip search, the visitor will be escorted to the visitor's parking lot and allowed to leave the institution without visiting the inmate. The visitor will be restricted from visiting any inmate at the institution in the future. See SECTION J
- (5) Minimal force will be used at all times when performing a forced strip search.
- (6) If no contraband is found during the search, the visitor will be allowed to go on the visit and an incident report shall be made by the staff involved.
- (7) If contraband is found during the search, the individual will be turned over to the Kentucky State Police for criminal prosecution.
- (8) The chain of evidence will be closely kept at all times.
- (9) An Extraordinary Occurrence Report will be completed by the Captains Office Clerk and initial by staff involved.

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- (10) The visitor will be restricted from visiting in the future.
7. A list of persons restricted from the institution shall be posted at the Visiting Desk. Individual visiting cards shall specify persons restricted from visiting individual inmates. The master log will be furnished to all institutions and updated as required.
 8. Visitors will follow the steps listed below to visit an inmate in the Visiting Building.
 - a. After parking in the visitor's parking lot, proceed to Box I where an officer will check pocket contents. No purses or briefcases will be allowed, unless it is an attorney visit.
 - (1) A sign will be posted listing items which are by statute considered to be dangerous contraband or contraband. Visitors are prohibited from entering the institution with such items and may be subject to prosecution (See CPP 9.6).
 - b. Proceed to the Visitation Building gate where the officer will again check the visitor's pockets and stamp the right hand of all visitors for identification purposes.
 - c. Proceed to Visitation Building and register at the desk showing picture I.D.
 - (1) All visitors 18 years of age and older who enter the Visiting Room or Lawn Visit Area will be required to possess a picture identification card and that picture identification card will be surrendered to a staff member in the Visiting Building or in the

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- Lawn Visit Area. The picture I.D. will remain in possession of that staff member until the completion of the visit, when it will be used as a means of positive identification for release of the visitor.
- (2) Any exceptions to the picture I.D. must be approved by the Senior Visiting Desk Clerk and documented (see SECTION K).
 - (3) Immediate family members may be allowed one (1) visit without picture I.D. This visit will be a non-contact visit in a security booth.
 - d. When the visitors approach the Visiting Desk and inform the clerks whom they wish to visit, a Visiting Desk Clerk will document the visit in the Notification Log of Inmate Visits, entering the inmate's name, number, dormitory, time the visit was registered, and the time the dormitory was notified.
 - (1) A Visiting Desk Clerk will notify the appropriate dormitory to page the appropriate inmate for the visit.
 - (2) If, after a reasonable lapse of time (30 minutes), it becomes necessary to recall the dormitory about the visit, the time of that call will also be logged.
 - (3) If the visit is cancelled for any reason by visitors or inmates, this will also be noted in the log.
 - e. When the visit is announced, a Visiting Desk Clerk will give the visitor directions to enter and electronically unlock the entry/exit doors,

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opening only one door at a time and admitting only authorized visitors. If the visiting room is crowded, the clerk or Visiting Room Officer may assign a specific table for each visit.

9. Inmates will enter the Visiting Building via the gate and fenced walkway located at the end of the Segregation 3 & 4 Building.
 - a. Inmates will not attempt entry unless paged for a visit. Inmate identification will be checked by the Visiting Room Officer and the inmate must possess a signed yard pass from a dormitory officer or work supervisor.
 - b. When an inmate enters the Visiting Building, the only items allowed in his possession are a comb, ID card, room key, pass, and locker key. None of the following items will be allowed in the Visiting Room:
 - (1) Cigarettes
 - (2) Matches
 - (3) Any jewelry other than watch, ring, necklace, religious medallion
 - (4) Prohibited clothing (coats, vests, walking shorts, sweat pants, hats)
 - c. Following a frisk search, inmates will be seated at a table and the officer will go to the lobby and announce the visit. The officer will collect the picture I.D. from visitors as they enter the Visiting Room.
 - (1) Inmates are not permitted to leave the table without the approval of the officer.
 - d. Visitors will be allowed to make purchases from the vending machines in the Visiting Room.

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- e. At the conclusion of the visit, the Visiting Room Officer will return the picture I.D. to the visitors as they are allowed to exit the Visiting Room.
10. Inmates must wear clean and presentable clothing.
 - a. Shirt with sleeves
 - b. Full length trousers
 - c. Socks
 - d. Shoes
11. Plaited and/or braided hair will be allowed on visits. Hair may be subject to a search for contraband at the discretion of the officer in charge of the visiting area.
12. The inmate and his visitor will be allowed a brief kiss and a brief embrace at the onset and finish of the visit. Hand holding will be allowed during the visit, but no other overly demonstrative displays of affection. *Excessive contact* shall be determined by the Visiting Room (with respect for other visitors) and may result in the visit being terminated.
13. The visitor shall give nothing to the inmate with the exception of a money receipt. Any other item will be confiscated and a disciplinary report filed with the Captains Office.
14. Visitors are allowed access to the restroom facilities located in the lobby, but are encouraged to use the restroom prior to entering the Visiting Room. During less crowded visiting periods, the officer may allow visitors to exist the Visiting Room for the purpose of using the restroom facilities and visitors will be allowed to re-enter the Visiting

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Room to continue the visit for the remainder of time.

- a. Visitors must pick up their picture I.D. before leaving the Visiting Room to use the facilities, and must give it back to the officer as they re-enter.
 - b. Children must be accompanied by an adult visitor when leaving the Visiting Room to use the restroom. No children will be allowed to remain in the Visiting Room without an adult visitor to supervise them.
 - c. Visitors may not re-enter the Visiting Room for any other purpose than stated above without having their visit terminated.
 - d. The Visiting Room Officer will have the discretion to deny restroom privileges during extremely overcrowded visiting periods.
 - e. Inmates are allowed to utilize the restroom in the Visiting Room. *Under no circumstances shall inmates and visitors be allowed to utilize the same facilities.*
15. Visitors will not be permitted to re-register to visit the same inmate on the same day.
 16. At the completion of the visit, the inmate will be strip searched in the designated area of the Visiting Room. The search shall be thorough and exhaustive in order to reduce the potential of contraband being brought into the institution.
 - a. There shall be no contact with any inmate outside the Visiting Room prior to the visited inmate being strip searched.

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- b. There shall be no contact with another inmate in the Visiting Room after the completion of the strip search.

17. Inmates will exit the Visiting Building via the fenced walkway and gate.

C. Lawn Visits

1. The Lawn Visiting Program is a special incentive program designed for use by the Honor Dormitory inmates, Honor Dormitory waiting list inmates, Honor Status Unit D (A-B-C-D- Wing) inmates, and inmates assigned to the Firehouse. This special program is in addition to the regular visiting program. Following are guidelines which apply.
2. Lawn visits will be held on Saturday, Sunday and holidays (weather permitting). The Shift Supervisor will determine if the weather is unacceptable for lawn visits. Since the visiting area is under cover, this area may be used for visits even though rainy conditions exist. However, the area may be closed in the event of a sudden thunderstorm, accompanied by wind and/or lightning that would jeopardize the safety of the officers, visitors and inmates.
3. The visiting area adjacent to Unit C will be used for lawn visits. Only inmates from Honor Dorms or on a waiting list for these dorms, those eligible Unit D (A-B-C-D- Wing) inmates, and inmates assigned to the Firehouse may receive lawn visits.
 - a. Unit D (A-B-C-D Wing) residents have the opportunity to transfer to Honor Dorms as bed space becomes available. These individuals will

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be screened by the Unit Manager and be evaluated by Medical personnel. If, after meeting all requirements for transfer to an Honor Dorm, a Unit D (A-B-C-D- Wing) resident refuses to transfer and chooses to remain in the A-B-C-D Wing housing unit, he will not be permitted honor lawn visits. However, if he is judged medically unable to transfer and is otherwise eligible for Honor Dorm housing, lawn visits will be permitted.

4. Inmates will be allowed only one (1) lawn visit per week, either on Saturday, Sunday or holidays, and this lawn visit is in addition to the regular weekly visits allowed that particular inmate. Any additional visits received on the weekend or holiday in that week will be held in the regular Visiting Room. If the inmate expects more than one visit on a weekend, it is the inmate's responsibility to notify the particular visitor who is to ask for the lawn visit. Honor status inmates will be permitted to have an additional Lawn Visit on the following Holidays—Memorial Day, 4th of July, and Labor Day. The visit is in addition to their regular weekend Lawn Visit.
5. Lawn visits will be limited to the following visitors:
 - a. Parents, wife, designated girlfriend, children, brothers, sisters, grandparents, mother-in-law, father-in-law, approved volunteers (Volunteers in Corrections), and the spouses of the relatives listed above.
 - b. There will be an established visiting list for lawn visits. Each inmate's visiting list is confidential

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and is available only to appropriate staff or the individual inmate.

- c. Any change in the visiting list may be handled through the inmate's Casemanager. Changes may not be made more often than every 30 days. Only visitors on the visiting list with proper identification (picture I.D.) shall be permitted on a lawn visit.
- d. Honor Status Unit D (A-B-C-D Wing) and Honor Dorm waiting list resident visiting cards will be marked with an *H* in order to be distinguished from other resident visiting cards.
- e. Each Honor Dorm shall forward a copy of their updated waiting list to the Visiting Desk on Friday each week. *Only inmates with 120 days clear conduct* will be included in this list.
6. There will be a maximum of four (4) adult visitors (adult defined as over 18 years of age) per lawn visit. There will be no restriction on the number of children; however, children must be supervised by the adult visitors. Failure to adequately supervise the children can result in termination of the lawn visit. No visitor under the age of 18 shall be admitted unless accompanied by an adult or married to the inmate and can provide a copy of the marriage license.
7. The same restrictions involving clothing and items in pockets as is described in SECTION B. — Visiting Building Visits—will apply to lawn visits, except that:
 - a. When an inmate enters the Lawn Visiting Area, the only items allowed in his possession are a

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- comb, I.D. card, pass, locker or room key, cigarettes, matches, and any soft drinks purchased from the Canteen.
- b. Inmates may wear 1 watch, 1 ring, 1 necklace, and 1 religious medallion.
- c. No wallets, books, pictures, or cards will be allowed.
- d. After being seated at one of the picnic tables provided, the inmate may not straddle the bench on the table. Both feet must be on the same side of the bench.
- e. The visitor shall be permitted to bring table cloths, but it is the responsibility of the inmate to see that the cloth remains completely on the top of the table at all times. No more than one (1) inch of cloth may hang over the edge of the table on all four sides.
- f. When pictures of inmates and visitors are taken by a designated club or group, no excessive or obscene contact of any kind is allowed.
- g. No profane, vulgar, or sexually suggestive language by inmates or visitors will be permitted.
- h. Hemmed walking shorts (no shorter than mid-thigh) will be allowed on lawn visits. No sweat-pants are permitted.
- i. Cigarettes and matches will be allowed to be brought from the main compound to the lawn visiting area by inmates. However, cigarettes and matches must be used while on the lawn visit or discarded at the completion of the visit, as they will not be allowed to be brought back

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- to the main compound from the lawn visiting area.
 - j. During inclement weather, inmates will be permitted to wear jackets or coats on lawn visits. The Lawn Visiting Officer will make the determination if the weather warrants the wearing of jackets or coats. At no time, will jackets or coats be allowed during normal weather conditions.
 - k. Inmates and/or visitors *are not* permitted to sit or lie on the ground.
8. The hours for admitting lawn visitors are from 8:30 AM to 2:30 PM. All visitors must be off institutional grounds by 3:00 PM.
 - a. Visits may last for any length of time during these hours, depending on the number of visitors and available space. The length of the visits will be determined by the Shift Supervisor based on crowded conditions.
 - b. If visits are terminated by the Shift Supervisor prior to two (2) hours of visiting time due to crowded conditions, this shall be documented. The officer assigned to this area will document the time each visit begins on the form provided.
 9. Visitors may bring picnic-type food items to a lawn visit. The following limitations will apply:
 - a. No metal utensils, plastic only. These are to be removed by the visitor at the completion of the visit.
 - b. All food will be in plastic or cardboard containers.

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- c. No screw top containers are allowed in the area.
 - d. Styrofoam ice chests only are permitted. No ice chests made of other materials will be permitted beyond Box I.
 - e. No beverages, liquids or fruits of any type are to be brought into the institution. A water fountain is available. Inmates will be allowed to purchase soft drinks at the canteen and bring them into the lawn visiting area, or visitors may purchase soft drinks from available machines.
 - f. Food brought into the visiting area will be either consumed or removed by the visitors when they leave. No food will be taken back into the institution by inmates. Inmates have the responsibility of policing the immediate area upon the completion of their individual visit. Trash cans will be located in the visiting area.
10. Visitors will proceed as follows to the Lawn Visit area.
- a. Stop at Box I where pockets contents and any food items will be checked for contraband.
 - b. After inspection of pocket contents and food items, proceed to the Visitation Building Gate. The Officer at the gate will check pocket contents and food items again.
 - c. Enter the Visitation Building and register at the desk where comparison will be made of visitor(s) I.D. and visiting list.
 - (1) The staff at the Visiting Desk will fill out the visiting slip and notify the resident's dormitory of the pending visit. The number of visitors will be recorded on the visit-

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- ing slip. The Captains Office will be called if the dormitory phone is busy. The time of the call will be logged on the visit notification log.
 - (2) The date of the visit is to be recorded on the visiting card and the date circled to signify a lawn visit.
 - (3) The visitors, upon arrival at the unit D Lawn Area Gate, will present the visiting slip to the officer who will allow the visitors admission into the area after determining that the number of visitors corresponds with the number recorded on the visiting slip. The visiting slip will remain in the possession of the Unit D Officer.
 - (4) The Unit D Officer will then proceed with the visitors to Visiting Gate 2 (the gate entering the Honor Status visiting area). Upon arrival at the gate, the officer stationed inside the Honor Status visiting area will admit the visitors into the visiting area and give a brief explanation of visiting rules.
11. After being notified of the visit by the Visiting Desk or the Captains Office, the inmate will proceed to the gate between Dormitory 8 and 9 with proper identification in order to be admitted to the visiting area.
- a. No inmate will be admitted into the visiting area until after his visitors have arrived in the visiting area.
12. Proper behavior will be required and expected between the inmate and his visitors.

- a. Excessive physical contact to the extent that it attracts the attention of other visitors will not be tolerated. In the event of such action, the visit will be terminated and a disciplinary report filed on the inmate. The Adjustment Committee can restrict the inmate from having lawn visits for a specified amount of time.
 - b. No inmate or visitor will be permitted to approach the side of Dormitory 8 or 9 which faces the Honor Status visiting area or make verbal or physical contact with any inmate in that area.
 - c. Residents will not be allowed to approach the gate entering the Unit D lawn area at any time. A line has been placed on the sidewalk near the gate. No resident will be permitted to pass beyond this point at any time.
13. In the event it is necessary to close the visiting area because of weather conditions after visits have started, the inmate may continue the visit in the regular Visiting Room of the inmate's visit has lasted less than one (1) hour at the time the area is closed. In this case, the inmate's visitors will come back to the Visiting Desk for clearance to continue the visit for the same length of time that is being allowed in the regular Visiting Room on that particular day. This will not count as one of the inmate's three (3) inside visits. No food may be brought into the Visiting Room.
14. The inmate will not be allowed to take anything back to the main compound from a lawn visit that he did not bring with him, with the exception of a money receipt or pictures which have been taken during the lawn visit by an authorized institutional club.

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Visitors are not permitted to bring in any type of camera.

15. At the completion of the lawn visit, the visitors will exit through Visiting Gate 2. The inmate will be strip searched in the building provided for that purpose in the lawn visiting area. Inmates will remain at least ten (10) yards from the building until directed by an officer to enter the building. Inmate will not have:
- a. Any contact with inmates on the main compound before the strip search; and
 - b. Any contact with inmate on lawn visits after the search has been performed.

D. General Population Outdoor Visits

1. During fair weather, general population inmates who reside in non-honor Dormitories and the Geriatrics Unit will be permitted outdoor visits in the Honor Status lawn visiting area, utilizing the following guidelines.
 - a. Outdoor visits will be permitted on Thursdays and Fridays from 9:00 AM through 11:00 AM.
 - b. Each inmate will be allowed one (1) outdoor visit per week, which will count as one of his three permitted Visiting Room visits.
 - c. An inmate may not receive an outdoor visit unless he has been at this institution a minimum of 90 days. Inmates transferred from other institutions to the Reformatory will be allowed outdoor visits only they are assigned to the main compound, providing they have maintained clear conduct for a period of 90 days at the institution

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from which they were transferred (i.e., no disciplinary action greater than a warning or extra duty).

- d. No picnic lunches or food will be permitted during general population outdoor visits.
 - e. Outdoor visits will be limited to the following visitors: parents, wife, designated girl friend, children, brothers, sisters, grandparents, and approved volunteers (Volunteers in Corrections).
 - f. Other general rules and policies that pertain to Honor Status lawn visits also apply to outdoor visits with the above noted exceptions (see SECTION C).
2. General population inmates can receive an outdoor visit on the Thursday or Friday prior to the following Holidays—Memorial Day, 4th of July, and Labor Day. This visit will be from 8:30 till 2:30, and the visitors will be permitted to bring picnic lunches. This visit will count as one of the inmate's three weekly visits.

E. Night Visits

1. Night visits are a privilege, and as such, do not count as one of the three (3) visiting room visits allowed per week. However, a maximum of twenty-four (24) inmates per night will be allowed night visits.
 - a. Inmates living in Honor Dorms, inmates on an Honor Dorm waiting list, Firehouse inmates, or Honor Status Geriatric residents are allowed two (2) night visits per month.

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- b. Inmates from other living units are allowed one (1) night visit per month unless otherwise noted in this procedure.
2. Inmates must have been assigned to this institution a minimum of 90 days and have a minimum of 90 days clear conduct to qualify for night visits. Inmates must be working or be in an approved program. Warnings or disciplinary reports shall not infringe on night visit privileges.
 3. Only visitors described in Section C, Item 5 and Section D, Item 1.e of this procedure shall be allowed on night visits. It will be the responsibility of the Case Manager to verify the visitors' name on the Night Visit Request Form as being eligible for a night visits.
 4. To apply for a night visit, the inmate must obtain a Night Visit Request Form from his Case Manager and fill it out completely. The inmate will return it to his Case Manager, who will forward the request for approval to the administrative staff member in charge of night visits. After the administrative staff member has reviewed the request, he will approve or disapprove it and return the visitors pass section of the form to the inmate by institutional mail. The inmate will then mail the approved visitors pass section to his approved visitors. Under no circumstances will the inmate be permitted to pass this form to his visitors on a regular visit. The visitor will be required to have this pass with them when they arrive for a night visit.

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5. Each request form is valid only for the date indicated on the form. The request form should be submitted to the Case Manager at least two (2) weeks prior to the date of the requested visit. (Night Visit Request Form is attached to this procedure—see Attachment 3.)
6. Night visits will have a maximum of three (3) adult visitors (adult being defined as over 18 years of age). There is no limit to the number of children on a night visit, however, they must be supervised by the adults.
7. Because the Chief Clerks Office is closed during the time of night visits, no money may be left on inmate accounts.
8. The administrative staff member in charge of night visits will supply the 4:00 PM to 12:00 midnight Shift Supervisor with the institutional section of the Night Visit Request Form at the beginning of the shift during which the visit will occur.
 - a. Night visits will be held only on Monday, Wednesday, and Friday unless these days fall on a holiday; then the night visits will be suspended.
9. When night visitors arrive at the institution, they will follow these steps for admittance:
 - a. Night visitors must be at Box 1 not later than 6:30 PM nor before 6:30 PM.
 - b. Visitors will present the night visitors pass to the Box 1 officer who will check visitors' pocket contents and any food items for contraband.
 - c. The Night Visit Officer will process the authorized night visitors and escort them as a group

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- to the visitation gate where the Outside Patrol Officer will be waiting to admit them to the visiting area.
- (1) The Outside Patrol Officer will obtain the keys from Box 12, admit the visitors to the area, and return the keys to Box 12.
 - d. The Night Visit Officer will place an identification stamp on the right hand of all visitors and will direct them to enter the building where the visit will be verified.
 - e. Inmate scheduled for an approved night visit must be in the Visiting Room at 5:45 PM where they will be counted by the officer there for the 6:00 PM count. Should it be determined that a night visit will not take place, the inmate shall return to his housing unit after the 6:00 PM count clears.
 - f. Night visits will end promptly at 8:30 PM.
 - g. At 8:30 PM, the Outside Patrol Officer will obtain the keys from Box 12 and allow the visitors to exit.
 - h. The Night Visit Officer will escort the visitors as a group from the building and direct them to Box 1. As the visitors leave the building, they will be counted to assure the same number of visitors are exiting as had entered for night visiting.
 - i. The Visiting Building will be secured for the day and the keys returned to Box 12 by the Outside Patrol Officer.
 - j. Inmates may not take items back to the main compound that they received on a night visit

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nor will visitors carry anything out that the inmate has given them.

- k. Inmates will leave the Visitation Building and will be searched in accordance with the same procedures used on regular visits.
- 10. Food items will be allowed on night visits and will follow the same guidelines described in SECTION C, Item 9—Lawn Visits—Food item limitations.
- 11. All visitors will be subject to search as described earlier in this procedure.
- 12. Excessive physical contact between inmates and visitors will not be tolerated. Failure to abide by appropriate behavioral standards will result in the termination of the visit and disciplinary action for the inmate.

F. Legal Visits

- 1. When an inmate gets a visit from his attorney, he will follow the same procedures as for a visit in the Visiting Room, except that he will be allowed to visit in the Attorney/Client conference room without supervision.
 - a. No legal papers may be brought into the visiting room by the inmate without prior approval from the Captains Office.
 - b. No legal papers will be left by the attorney for the inmate. These papers will have to be mailed to him.

G. Clergy Visits

- 1. When a member of the clergy visits an inmate, he will follow the same procedure as for a visit in the

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Visiting Room and will use the private room designated for clergy. In all cases, the inmate will be strip searched at the completion of a clergy visit.

H. Safekeeper and Other Non-Contact Visits

- 1. Visitors will observe the same procedure as for Visiting Room visits; however, they will use the non-contact booth.
- 2. Visits will last a maximum of one (1) hour.
- 3. Inmates will be strip searched at the end of the visit.

I. Hospital Patient Visits

- 1. The same visiting privileges afforded to the inmates' previous housing assignment will apply during hospitalization. Inmates who are admitted directly from the I.D. Department will follow the visiting privileges for the Assessment & Classification Center.
- 2. All visits will be in the visiting room. No visits will be allowed on the hospital floor unless prior approval is given by the Medical Director or in his absence, the Health Service Administrator and/or Nurse Service Administrator.
- 3. Ambulatory patients will go to the visiting room by way of the yard.
 - a. The Hospital Correctional Officer will notify the Visiting Room Correctional Officer when the inmate leaves the floor. The Visiting Room Officer will notify the Hospital Officer when the inmate leaves the visiting room.

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- b. Inmates will be instructed that they are not allowed to go any other place while going to and returning from the visiting room. If instructions are not followed, disciplinary action will be taken.
- c. Wheelchair patients will go through Unit D to the visiting room.

J. Leaving Money on Inmate Account

1. Depositing of money on an inmate's account by visitors will be allowed only on inside or lawn visits during the 8:00 AM to 4:00 PM shift.
2. Deposits may be made only for the inmate who is being visited and must be done at the time the visitor registers to visit.
 - a. Prior to the opening of the building at 8:30 AM for visits, a Visitation Building Clerk will receive an adequate amount of cash from the Chief Clerks for that day's transactions.
 - b. At the end of the visiting day (by 3:30 PM) a Visitation Building clerk will turn in all cash receipts, and other cash to the Chief Clerks Office. At that time, the cash receipts will be verified and the next day's cash will be prepared for pickup.
3. There is no limit to the amount of money that a visitor may leave on an inmate's account.

K. Visitor Refused Admittance

1. A visitor may be denied a visit at any time if one or more of the following exists or there are reasonable grounds to believe that:

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- a. The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including, but not limited to:

- (1) The visitor has a past record of disruptive conduct.
- (2) The visitor is under the influence of alcohol or drugs.
- (3) The visitor refuses to submit to search or show proper identification upon request.
- (4) The visitor is directly related to the inmate's criminal behavior.
- (5) The visit will be detrimental to the inmate's rehabilitation.
- (6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.
- (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden.
- (8) The visitor has previously violated institutional visiting policies.
- (9) Former employees of the Kentucky State Reformatory will not be allowed to visit inmates unless they have authorization from the Warden prior to the time of the visit.

2. A master log will be kept at the Visiting Desk of all visitors who have been denied a visit for any of the reasons listed above. A visitor who is denied

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a visit will not be allowed to visit an inmate for up to six (6) months following the incident. Persons who bring dangerous drugs or contraband into the institution may be denied visits indefinitely, until permission is granted by the Warden. The Duty Officer has the responsibility of denying a visit for the above reasons.

a. The master log will be furnished to all institutions and updated as required.

3. Any time a staff member feels a visitor should not be allowed admittance for any of the reasons above, the Sift Supervisor and the Duty Officer shall be notified. The final decision will be with the Duty Officer. All decisions will be documented. If it is felt that the individual presents a serious threat of danger to himself or others the Kentucky State Police will be advised of the situation so they may make a decision on whether their intervention is needed.

(a) In the event a visitor is refused admittance, they are to return to the visitors parking lot. They are not permitted to remain in the lobby as this space is reserved for those visitors waiting for their visit to be announced.

L. Visitor Identification

1. A visitor shall present identification at the time of registration for a visit. Valid identification is a drivers license, county I.D. or an equivalent piece of identification with a picture of the visitor permanently affixed to it.
 - a. Any exception to the picture I.D. must be approved by the Senior Visiting Desk Clerk and

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documented. The Senior Visiting Desk Clerk will perform these duties for the Visiting Room and Lawn Visits.

(1) Immediate family members will be allowed one (1) visit without a picture I.D. This visit will be a non-contact visit in the security booth.

- b. Only visitors with a picture I.D. will be allowed to visit on night visits.
- c. Any exception to the picture I.D. on night visits must be approved by the Night Visit Officer and will be documented.

2. Officers at Box 1 and the Visiting Gate who have a question about a visitor may ask to examine the visitor's identification.

M. Packages on Visits

1. No packages will be brought into the institution on any visits. Packages must be sent by mail only. See KSR 17-00-07 — Inmate Personal Property — for specific guidelines for packages received by mail or UPS.

N. Visitors Traveling Long Distances

1. In instances where visitors have traveled long distances to visit an inmate, allowances may be made for an extended visit or extra visits beyond the inmate's weekly limit. This is for inside visiting room visits only. The decision to allow an extended or extra visit is dependent on:
 - a. The volume of visits for that day.
 - b. The visitors must request an extended or extra visit at the onset of the visit or be approved by

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the Assistant Warden for Security prior to the date of the visit.

c. The inmate's behavior.

d. The visitor has traveled more than 150 miles.

2. The decision will be made by the Shift Supervisor whether or not to grant an extended visit, unless it has been previously approved by the Assistant Warden for Security.

O. Visitor Dress and Behavior Guidelines

1. No visitors (children and adults) will be admitted if barefooted. Footwear must be worn once the visitor is beyond Box 1.
2. Visitors must be dressed in a manner that will not distract, disturb, or be offensive to other visitors, inmates, or staff in the visiting areas. If there is any question concerning a visitor's clothing, the Shift Supervisor will be notified to make a determination whether or not the visitor will be allowed in the institution.
3. Visitors will use waste containers and ash trays in the visitor's waiting room.
4. No profane, vulgar or sexually suggestive talk will be allowed during a visit.
5. Visitors and inmates will act in a dignified, responsible manner while on a visit. Visitors and inmates who do not act in such a manner will have their visit terminated on the approval of the Shift Supervisor. Inmates who do not act in the manner described above will have a disciplinary report filed on them. Visitors who do not act in the manner described may be restricted from visiting privileges

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at the discretion of the Assistant Warden for Security.

6. Visitors are to abide by all rules and regulations of the institution. Failure to abide will result in their visit being terminated.

P. Legal Papers Brought In On Visit — (Non-Attorney Visits)

1. Legal papers may be brought in on a visit if they meet the following criteria:
 - a. Legal papers are to be signed by the inmate being visited or reviewed by him.
 - b. Legal papers will not be permitted to remain with the inmate at the completion of the visit. Visitors must take the legal papers with them when they leave.
 - c. The volume of legal papers will be such that they can easily be searched and will not interfere with or distract from any other visits that are taking place.
 - d. Any questions on legal papers shall be directed to the Shift Supervisor or make a determination if they will be allowed in on a visit.

Q. Special Requests

1. An inmate who has a unique problem in complying with the criteria in this procedure may contact his Case Manager and request that consideration be given to aid him with his particular problem.
 - a. If the Case Manager believes the request is reasonable, considering the circumstances, he/she will prepare a memorandum to the Assistant

Kentucky State Reformatory Procedures Memorandum

Warden for Security, detailing the request and the reasons for it. The Assistant Warden for Security may:

- (1) *Deny the request.* When this is done, he shall return the request to the Case Manager who will notify the inmate involved of the denial of the request.
 - (2) *Approve the request.* When this is done, the Assistant Warden for Security shall approve the memorandum. The memorandum shall be returned to the Case Manager who will then notify the inmate.
- b. All special requests must be submitted at least seven (7) days in advance.
- (1) A copy of the decision reached will be forwarded to the caseworker, inmate, and visiting desk.
 - (2) Notification will be forwarded NO later than three (3) days prior to the scheduled request.

R. Transportation for Visitors

1. Visiting Room Staff will maintain a bulletin board in the visitation building lobby to facilitate visitor transportation to and from the Reformatory.
 - a. Visiting Room Staff will post on the Bulletin Board up-to-date information regarding transportation routes, scheduling, carpooling, local taxi service and special transportation opportunities to and from the institution.
 - b. An Area Map will be posted with marked transportation routes in proximity to the institution.

Kentucky State Reformatory Procedures Memorandum

- c. The Assistant Warden for Security or his designee is responsible for maintaining this bulletin board.

ACTION All staff members will comply with this procedure upon its issuance. Any exception to this procedure must be authorized by the Assistant Warden for Security or when he is not available, the Duty Officer.

(s) John D. Rees
John D. Rees, Warden
Kentucky State Reformatory

Attachment 1: Adult Search Consent Form

Attachment 2: Children Search Consent Form

Attachment 3: Night Visit Request Form

CC-1023
(8/83)

KSR 16-00-01
Attachment I

**KENTUCKY CORRECTIONS CABINET
ADULT SEARCH CONSENT FORM**

I am _____. I am over 18 years of age. I understand that I have been asked to allow a search of my person which will involve the removal of my clothing and/or a search of certain body cavities by medical personnel. I understand that this is a purely voluntary procedure. I understand that my refusal to permit this search may result in a permanent denial of my privilege of visiting anyone in this institution. I understand that this search will be conducted by trained, certified medical personnel, if it involves a body cavity search, and that in no case will I be touched during the search by anyone except medical personnel.

Understanding all these facts, I give my permission for the search as evidenced by my signature this ____ day of _____, 19____.

Signature

Witness

CC-1024
(8/83)

KSR 16-00-01
Attachment II

**KENTUCKY CORRECTIONS CABINET
CHILDREN SEARCH CONSENT FORM**

I am _____. I am the parent or guardian for _____ who is a minor under the age of 18. I understand that I have been asked to allow a search of his/her person which will involve the removal of his/her clothing and/or a search of certain body cavities by medical personnel. I understand that this is purely a voluntary procedure. I understand that my refusal to permit this search may result in a permanent denial of my privilege of his/her privilege of visiting anyone in this institution. I understand that this search will be conducted by trained, certified medical personnel, if it involves a body cavity search and that in no case will he/she be touched during the search by anyone except medical personnel.

Understanding all of these facts, I give my permission for this search as evidenced by my signature this ____ day of _____, 19____.

Signature

Witness

RESIDENTS MUST FILL OUT BOTH SIDES OF THIS FORM AND RETURN TO THEIR CASEWORKER AT LEAST TWO WEEKS BEFORE THE DATE REQUESTED FOR YOUR VISIT. YOU MUST BE A RESIDENT AT KSR FOR 90 DAYS AND HAVE CLEAR CONDUCT FOR 90 DAYS. ONLY IMMEDIATE FAMILY MEMBERS (OR OTHER SPECIALLY APPROVED VISITORS) WILL BE PERMITTED TO ATTEND THIS PROGRAM. YOU MAY HAVE UP TO TWO ADULTS. THERE IS NO LIMIT TO THE NUMBER OF CHILDREN UNDER 18 YRS. OLD WHO WILL BE ADMITTED.

NAME: _____ NUMBER: _____ DORM: _____ DATE: _____
VISITOR NAME _____ STREET ADDRESS _____ CITY _____ STATE _____ RELATIONSHIP _____
1. _____
2. _____
3. _____

NUMBER OF CHILDREN UNDER 18 YRS OF AGE EXPECTED: _____

DATE VISIT IS REQUESTED: MONTH _____ DAY _____ YEAR _____

KENTUCKY STATE REFORMATORY VISITORS PASS NIGHT VISIT PROGRAM
RESIDENT NAME _____ NUMBER: _____ DORM: _____

VISITOR NAME _____ STREET ADDRESS _____ CITY _____ STATE _____ RELATIONSHIP _____
1. _____
2. _____
3. _____

NUMBER OF CHILDREN UNDER 18 YRS OF AGE EXPECTED _____

THE VISIT IS REQUESTED FOR: MONTH _____ DAY _____ YEAR _____

ADMINISTRATIVE ACTION

THE ABOVE LIST IS APPROVED

NOT APPROVED

STAFF SIGNATURE: _____

DATE _____

This PASS authorizes you to enter the Kentucky State Reformatory and visit the above named resident on the date indicated. You must present this PASS before you will be admitted. Identification will be required of all adult visitors. THIS PASS IS VALID ONLY ON THE DATE INDICATED.

NOTICE

RULES FOR NIGHT VISITS

NOTICE

1. All visitors must arrive between 6:00 and 6:30 PM or the visit will not be permitted.
2. Visitors must present this PASS or visit will not be permitted.
3. Proper identification of adults is mandatory. Picture Identification is required.
4. Visitors will be subject to search.
5. NO ITEMS are to be passed between visitors and residents. Promoting contraband is a FELONY offense.
6. Children must be properly supervised at all times.
7. An evening visit does not take the place of a weekly daytime visit.
8. No money or packages will be received from visitors on Night Visit. Packages will be received by mail only.
9. All visitors must be on the resident's approved visiting list for this special program. All visitors must leave promptly at 8:30 PM.

Violation of these rules can result in suspension of visiting privileges.

SPECIAL NOTE: FOOD ITEMS MAY BE BROUGHT IN ON THE VISIT. NONE MAY BE TAKEN BY THE RESIDENT BACK TO THE YARD. ONLY PLASTIC UTENSILS ARE PERMITTED. NO FRUIT OR JUICES OR OTHER BEVERAGES MAY BE BROUGHT IN.

UNITED STATES DISTRICT COURT**WESTERN DISTRICT OF KENTUCKY
AT PADUCAH****Civil Action No. 79-0092-P(J)**

JAMES M. THOMPSON, et al., - - - *Plaintiffs,**v.***DAVID H. BLAND, et al.,** - - - *Defendants,*
UNITED STATES OF AMERICA - - - *Amicus Curiae.*

MEMORANDUM

This case is before the court on plaintiffs' motion concerning visitation. Plaintiffs claim that the defendants' suspension of visitation privileges without a hearing violates section 12 of the consent decree as set forth in *Kendrick v. Bland*, 541 F. Supp. 21 (W.D. Ky. 1981), and the due process clause of the 14th Amendment to the United States Constitution.

Specifically, plaintiffs claim that defendants do not have procedures for providing a hearing prior to visitation suspensions, for restoring visits, or for review of the decision to suspend. Plaintiffs also claim that the existing procedures which provide for suspension in connection with nine areas of misconduct, are broad, vague and arbitrary. The particular incidents at issue here concern the suspension of certain individuals from visiting prisoners, and not the suspension of prisoners from receiving visits.

EXISTING PROCEDURES

The Corrections Policies and Procedures (No. 403.06) governing general inmate visitation provide for the exclusion of visitors for the following reasons:

Memorandum

- A. The visitor's presence is a clear and probable danger to the security or orderly operation of the institution;
- B. The visitor has a past history of disruptive conduct;
- C. The visitor is under the influence of alcohol or drugs;
- D. The visitor refuses to be searched or to show proper identification;
- E. The visitor is directly related to the inmate's criminal behavior;
- F. The visitor is on probation or parole and has no special permission to visit.

In addition to the above restrictions, Kentucky State Reformatory procedures (KSR 16-00-01(K)(1)(a)) add the following:

- (5) The visit will be detrimental to the inmate's rehabilitation;
- (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden;
- (8) The visitor has previously violated institutional visiting policies;
- (9) The visitor is a former employee of KSR and does not have the prior approval of the Warden.

This court finds that these regulations are not vague or arbitrary and are within the principles set forth in *Bellamy v. Bradley*, 729 F. 2d 416 (6th Cir. 1984). This case provides that inmates do not possess a constitutional right to visitation and that prison officials may impose limitations when necessary to ensure the safety of the institution.

Memorandum

CONSENT DECREE

Section 12 of the consent decree provides that visitation should be maintained at "the current level with minimal restrictions." Defendants claim that the present visitation policy is identical to the one in effect at the time of the consent decree, and that they are not in violation of the decree because it did not establish any additional visitation rights. This court finds that the present policy does not violate Section 12 of the consent decree.

DUE PROCESS

Plaintiffs claim that they have a liberty interest in visitation and that defendants' present policies violate due process by failing to include a method of reviewing actions suspending that liberty interest. In *Pugliese v. Belson*, 617 F. 2d 916, 922 (2d Cir. 1980), the court held that a liberty interest may be created by statute, judicial decree or regulation. Plaintiffs state, that since an open visitation policy was judicially established in the consent decree, a liberty interest in visitation was created which should not be curtailed absent due process procedures.

A similar issue was addressed by the United States Supreme Court in *Hewitt v. Helms*, 103 S. Ct. 864 (1983), where the court held that procedures set forth in state statutes and regulations for implementing administrative segregation created a protected liberty interest in remaining in the general prison population. The court stated that the key factor in determining the existence of a liberty interest is whether or not the state's guidelines are mandatory in character, and use language such as "shall", "will", or "must". The court did note, however, that minimal procedures—notice, an informal nonadversary review of the information, and an opportunity by the inmate to be heard—were sufficient to satisfy due process requirements.

Memorandum

Finally, plaintiffs cite *Kozlowski v. Coughlin*, 539 F. Supp. 852 (S.D. N.Y. 1982), in support of their position. That case concerned a New York statute which established that "no inmate shall be deprived of the . . . visiting privileges available to inmates in the general population." *Id.* at 856. The court held that the statute created a liberty interest in receiving visitors, and that some form of hearing concerning revocation was required. Plaintiffs here claim that since the consent decree provides that "[d]efendants shall continue their open visiting policy," that defendants also must provide a hearing to review revocation of that liberty interest.

In this situation, this court finds no evidence that defendants provide for any type of a review of decisions to revoke or suspend visitation privileges. The language of the consent decree is mandatory in character, within the meaning of *Hewitt v. Helms*, *supra*, in that it requires continuation of an open visitation policy. Therefore, the plaintiffs possess a liberty interest in open visitation, and defendants must provide minimal due process procedures when visitation of a prisoner is suspended or revoked. Those procedures should include, and may be patterned after, those as provided in *Hewitt v. Helms*, 103 S. Ct. at 874: an informal, nonadversary review in which a prisoner receives notice of and reasons for the revocation, and an opportunity to respond.

An appropriate order shall accompany this memorandum.

Dated: June 26, 1986

(s) Edward H. Johnstone
Edward H. Johnstone, Chief Judge
United States District Court

Entered: June 27, 1986

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-P(J)

JAMES M. THOMPSON, et al., - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - Defendants,
UNITED STATES OF AMERICA, - - - Amicus Curiae.

ORDER

In accordance with the memorandum opinion this date entered,

IT IS ORDERED that defendants implement minimal due process procedures as provided in *Hewitt v. Helms*, 103 S. Ct. 864 (1983), with respect to revocation or suspension of plaintiffs' visitation privileges. These procedures should include notice to the inmate of and reasons for the revocation or suspension, and an opportunity for the inmate to be heard.

Dated: June 26, 1986

(s) Edward H. Johnstone
Edward H. Johnstone, Chief Judge
United States District Court

Entered: June 27, 1986

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

Civil Action No. 79-0092-P

JAMES M. THOMPSON, et al., - - - Plaintiffs,

v.

DAVID H. BLAND, et al., - - - Defendants,
UNITED STATES OF AMERICA, - - - Amicus Curiae.

ORDER—Entered July 31, 1986

Upon Motion of the Defendants for a stay of the enforcement of this Court's Memorandum Opinion and Order of June 27, 1986 concerning the issue of the Defendants' suspension of visitation privileges, and the Court being otherwise fully and sufficiently advised.

IT IS HEREBY ORDERED AND ADJUDGED that said motion be, and hereby is GRANTED and that this Court's Memorandum Opinion and Order of June 27, 1986 is hereby STAYED pending Defendants' appeal to the United States Court of Appeals for the Sixth Circuit.

So Ordered this 30th day of July, 1986.

(s) Edward H. Johnstone
Judge
United States District Court

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 86-5836

JAMES M. THOMPSON, Et Al., - - - Plaintiffs-Appellees,

COMMONWEALTH OF KENTUCKY,
DEPT. OF CORRECTIONS, Et Al., - Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

Decided and Filed November 19, 1987

Before: MERRITT, MARTIN and WELLFORD, Circuit Judges.

MARTIN, Circuit Judge, delivered the opinion of the court, in which MERRITT, Circuit Judge, joined. WELLFORD, Circuit Judge, (pp. 11-13) delivered a separate concurring opinion.

BOYCE F. MARTIN, Jr., Circuit Judge. The sole issue presented by this case is whether a consent order and prison policy created a liberty interest in visitation privileges such that due process requires some procedure before denying visitation. The district court found that a liberty interest did exist. We agree.

It is well recognized that there are two means by which a constitutionally protected liberty interest can be found to exist. First, certain rights and interests are so inherent in

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our society that they may be infringed only if procedural due process has been afforded. Second, the state may build up the public's expectations of a protected interest in other areas by enactment of statutes, regulations and other state actions. In this situation, too, due process requirements must be complied with before that state can limit the individual's interest in the created liberty. Before we apply this approach, however, we summarize the relevant facts.

Plaintiffs, prisoners at the Kentucky State Reformatory and Kentucky State Penitentiary, filed a lawsuit concerning prison interests. The lawsuit led to a consent decree addressing conditions of confinement at the State Reformatory and State Penitentiary. See *Kendrick v. Bland*, 541 F. Supp. 21, 27-49 (W.D. Ky. 1981), *aff'd*, 740 F. 2d 432 (6th Cir. 1984). Concerning visitation, the consent decree declared: "The Bureau of Corrections encourages and agrees to maintain visitation at least at the current level with minimal restrictions. . . . Defendants shall continue their open visitation policy." 541 F. Supp. at 37.

The subsequently-adopted procedures concerning visitation regulations at Kentucky State Reformatory, under which plaintiffs sued defendants in this case, declared:

STATEMENT OF POLICY AND PURPOSE

Although administrative staff reserves the right to allow or disallow visits, it is the policy of the Kentucky State Reformatory to respect the right of inmates to have visits in the spirit of the Court decisions and the Consent Decree, while insuring the safety and security of the institution. The following are the procedures to be enforced in regard to all types of visits.

Kentucky State Reformatory Procedures Memorandum, No. KSR 16-00-01 (Sept. 30, 1985). This policy stated that

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"[a]n inmate is allowed three (3) separate visits . . . per week." *Id.* ¶ B.3. Concerning refusal of visits, the policy stated:

1. A visitor may be denied a visit at any time if one of more of the following exists or there are reasonable grounds to believe that:

a. The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including but not limited to:

(1) The visitor has a past record of disruptive conduct.

(2) The visitor is under the influence of alcohol or drugs.

(3) The visitor refuses to submit to search or show proper identification upon request.

(4) The visitor is directly related to the inmate's criminal behavior.

(5) The visit will be detrimental to the inmate's rehabilitation.

(6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.

(7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden.

(8) The visitor has previously violated institutional visiting policies.

Id. ¶ K. The 1985 policy also stated that the Duty Officer was responsible for denying visits for the above reasons.

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If a staff member believed a visitor should be denied, the staff member should notify the Duty Officer, who had the final decision. *Id.* ¶ 2, 3.

In 1985, inmate Kenneth Bolitt's mother was denied visitation rights for a short time after bringing to the institution a man previously barred from the institution for smuggling contraband. Another inmate's mother and girlfriend also had their visitation privileges suspended when the inmate was convicted of receiving contraband after one of their prior visits. In both instances, the visitation privileges were suspended without a hearing. Plaintiffs filed a motion seeking a court order requiring defendants to establish procedures, including a notice and hearing, to be followed before restricting visitation.

Plaintiffs claim that the due process clause requires such procedures to protect the inmates' liberty interests. The district court agreed with plaintiffs and ordered defendants to establish at least minimal procedures. The necessary predicate to that order was the district court's finding that the inmates had a liberty interest in visitation privileges. The question on appeal is whether the claimed liberty interest exists.

Prison officials have generally been found to possess broad discretionary authority over prison administration. As the Supreme Court has recognized,

"[C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state panel institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." (Footnote omitted.)

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Jones v. North Carolina Prisoners' Union, 433 U.S. 119, 126 (1977) (quoting *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)). "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations of our penal system." *Id.* at 125. The Supreme Court has "consistently refused to recognize more than the most basic liberty interests in prisoners." *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). Thus, the Supreme Court has found no "constitutional or inherent right" to placement in any particular prison or state, *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983), *Meachum v. Fano*, 427 U.S. 215, 225 (1976), placement in any particular section within a prison, *Hewitt v. Helms*, 459 U.S. at 468, parole, *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979), or good-time credit for satisfactory behavior, *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

Specifically addressing visitation privileges, we have ruled that "[p]rison inmates have no absolute constitutional right to visitation." *Bellamy v. Bradley*, 729 F. 2d 416, 420 (6th Cir.), *cert. denied*, 469 U.S. 845 (1984). This conclusion is in keeping with the above recited Supreme Court decisions. The Court in *Hewitt* asserted that the issues of parole and good-time credits "involve release from institutional life altogether, which is a far more significant change in a prisoner's freedoms than that at issue here [administrative segregation], yet in *Greenholtz* and *Wolff* we held that neither [parole nor good-time credits] involved an interest independently protected by the Due Process Clause." *Hewitt*, 459 U.S. at 468. That reasoning compels the same conclusion here with respect to visitation privileges. The denial of a visit from a given visitor has a far less significant impact on a prisoner's "freedoms" than

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parole, good-time credits, or even administrative segregation. Because these rights are not inherently protected by the due process clause, visitation privileges are not inherent constitutional rights.

Despite the absence of a claim of inherent constitutional right, a state may nevertheless create a liberty interest by enacting a statute or regulation. *Hewitt*, 459 U.S. at 469, and we have further held that liberty interests can be created by prison officials' policy statements and other promulgations. *Bills v. Henderson*, 631 F. 2d 1287, 1291 (6th Cir. 1980) (citing *Walker v. Hughes*, 558 F. 2d 1247, 1255 (6th Cir. 1977)). Courts have found, for example, that state statutes or prison policies have created liberty interests in not being placed in administrative or disciplinary segregation. *Hewitt*, 459 U.S. at 472, *Franklin v. Aycock*, 795 F. 2d 1253, 1260 (6th Cir. 1986), *Bills v. Henderson*, 631 F. 2d at 1294, not being transferred from a prison to a mental hospital. *Vitek v. Jones*, 445 U.S. 480, 489 (1980), not being reclassified from minimum to medium security, *Beard v. Livesay*, 798 F. 2d 874, 879 (6th Cir. 1986), eligibility for parole, *Greenholtz*, 442 U.S. at 12, *Mayes v. Trammel*, 751 F. 2d 175, 179 (6th Cir. 1984), not being placed in solitary confinement, *Wright v. Enomoto*, 462 F. Supp. 397, 403 (N.D. Cal. 1976), *aff'd mem.*, 434 U.S. 1052 (1978), and receiving good-time credit for satisfactory behavior, *Wolff*, 418 U.S. at 556-57.

As the Supreme Court asserted in *Hewitt*.

There are persuasive reasons why we should be loath to transpose all of the reasoning in the cases just cited to the situation where the statute and the regulations govern the day-to-day administration of a prison system. The deprivations imposed in the course of the daily operations of an institution are likely to be

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minor when compared to the release from custody at issue in parole decisions and good-time credits. Moreover, the safe and efficient operation of a prison on a day-to-day basis has traditionally been entrusted to the expertise of prison officials, see *Meachum v. Fano*, [427 U.S.] at 225. These facts suggest that regulations structuring the authority of prison administrators may warrant treatment, for purposes of creation of entitlements to "liberty," different from statutes and regulations in other areas.

459 U.S. at 470. Despite these "persuasive reasons," however, the *Hewitt* court found that the Pennsylvania statutes and regulations had created a protected liberty interest. *Id.* at 470-71.

We, too, find persuasive reasons to distinguish visitation privileges from parole good-time credits, or even administrative or disciplinary segregation. We recognize, however, that a state may create a liberty interest in freedom from even relatively minor deprivations, see *Hewitt*, 459 U.S. at 470-71. We conclude, therefore, that a state may also create a liberty interest in visitation. We must next consider whether the prison policies at issue in this case created a liberty interest in visitation privileges.

Whether a protected liberty interest has been created depends on whether the inmates have a "legitimate claim of entitlement" to the interest rather than a mere "unilateral expectation." See *Beard v. Livesay*, 798 F. 2d 874, 877 (6th Cir. 1986). An entitlement and protected interest exist if "statutes or prison policy statements have limited prison officials' discretion by imposing a specific prerequisite to the forfeiture of benefits. . . ." *Id.* (quoting *Bills v. Henderson*, 631 F. 2d 1292-93). If prison officials have "complete discretion," however, no liberty interest has been created.

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Beard, 798 F. 2d at 877 (quoting *Bills*). The Supreme Court used similar language in *Olim v. Wakinekona*, 461 U.S. 238 (1983):

These cases demonstrate that a State creates a protected liberty interest by placing substantive limitations on official discretion. An inmate must show "that particularized standards or criteria guide the State's decisionmakers." *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan, J., concurring). If the decisionmaker is not "required to base its decisions on objective and defined criteria," but instead "can deny the requested relief for any constitutionally permissible reason or for no reason at all," *ibid.*, the State has not created a constitutionally protected liberty interest. See *id.*, at 466-67 (opinion of the Court); see also *Vitek v. Jones*, 445 U.S., at 488-491 (summarizing cases).

Id. at 249. Compare *Olim*, 461 U.S. at 249 (no liberty interest because no standards limited or restricted the officials' determination), and *Meachum v. Fano*, 427 U.S. at 228 (no liberty interest because officials had discretion to transfer prisoner for any reason or for no reason) with *Wolff v. McDonnell*, 418 U.S. at 558 (liberty interest created because state created statutory right to good-time credit which could be withdrawn only for "serious misconduct"). The *Hewitt* Court also made clear that procedural guidelines alone do not establish a liberty interest, but "the repeated use of explicitly mandatory language in connection with requiring specific substantive predicates" creates a liberty interest. 459 U.S. at 471-72.

We turn now to the determination of whether the state went beyond the establishment of mere guidelines by using

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"mandatory language" in connection with "specific substantive predicates," *Hewitt*, 459 U.S. at 472. That is, whether the state, in the words of *Olim*, placed "substantive limitations on official discretion" with "particularized standards." *Olim*, 461 U.S. at 249. For the reasons set out below, we believe the state did do more than just establish guidelines.

"Mandatory" language can be found in the consent order and policy statements at issue here. In the consent order, it is written that "Defendants shall continue their open visitation policy." 541 F. Supp. at 37. The policy statement provides further that "An inmate is allowed three separate visits per week." (emphasis added). We recognize, however, that while this mandatory language buttresses the argument for finding a protected liberty interest, it may not be sufficient, by itself, to create a protected liberty interest.

In this case, however, each of the three sets of prison policies in effect since the signing of the consent decree placed "substantive limitations on official discretion," *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983), by enumerating "particularized standards or criteria" to constrain the discretion of state decisionmakers. *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan, J., concurring). According to the sets of regulations in effect at the time of the signing of the consent decree, and currently, visitors may be excluded only when "there are reasonable grounds to believe" that a visitor's presence would constitute a "clear and probable danger" to the institution's safety, security, or orderly operation. A nonexhaustive series of examples then follows, cited *supra* in this opinion. Both the "reasonable grounds to believe [a visitor constitutes] a clear and probable danger" and the examples listed that satisfy this criterion are substantive determina-

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tions that form the basis for official decisions to exclude visitors. *Hewitt*, 459 U.S. at 471-72.

A set of policies also apparently in effect since 1981 states that "certain visitors who are either a threat to the security or order of the institution or nonconductive to the successful re-entry of the inmate to the community may be excluded." A similar nonexhaustive series of six examples follows. Corrections Policies and Procedures No. 403.06. Thus, the consent order and policy statements indicate that prison officials are constrained by substantive limitations and do not enjoy absolute discretion when excluding visitors.

It is well settled that the presence of regulatory language that meaningfully limits the discretion of decision-makers can create a liberty interest. Such an interest may be created even if the restrictions imposed are largely predictive and are based upon the application of standards of reasonableness. *See Board of Pardons v. Allen*, 107 S. Ct. 2415, 2418-21 & n.10 (1987); *Mayes v. Trammell*, 751 F. 2d 175, 178-79 (6th Cir. 1984). We conclude that, given the regulatory and mandatory language discussed above, a liberty interest was created under the circumstances here.

We must remand this case, however, for a further determination of precisely which set of regulations covers the plaintiff class. The Procedures Memorandum, which we find does create a liberty interest, purports to cover visits at the Kentucky State Reformatory; it is unclear from the record what set of regulations governs visits in other parts of the Kentucky system. We affirm the District Court's holding that the current lack of any kind of hearing does not violate the consent decree. We do not reach, therefore, the issue of whether a consent decree can create a liberty interest enforceable beyond a district court's traditional

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power to enforce its orders. *Cf. Green v. McKaskle*, 788 F. 2d 1116, 1123-24 (5th Cir. 1986).

The decision of the District Court is affirmed in part, as aforesaid, and the case remanded for findings concerning the precise set of prison regulations applicable to plaintiffs and the precise nature of the limitations on official discretion contained in the applicable regulation and for further proceedings respecting the particular procedural process due the plaintiffs when visitation is denied.

WELLFORD, Circuit Judge, concurring:

I concur in the remand with some reluctance because of my reservation about creation of a liberty interest under the Procedures Memorandum. I concur that lack of a hearing in the Kentucky procedures does not violate the consent decree, and would conclude that the consent decree creates no liberty interest "enforceable beyond a district court's traditional power to enforce its orders."

My reluctance about creation of a liberty interest involves the following considerations. Visitation is merely a part of the daily operation of the prison, which affects only the circumstances of the prisoner's situation in prison. By contrast, parole and good-time credit decisions affect a prisoner's *release* from custody, which fully implicates his "liberty" in the ordinary meaning of the word. Moreover, "[t]he concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution." *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 126 (1977). Decisions concerning visitation privileges, therefore, involve, in my view, even less of an encroachment on a prisoner's remaining "freedoms" while in prison than do decisions concerning his associational rights or placement within the prison. Administrative or disciplinary segregation directly affects the prison-

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er's "liberty" in that it further restricts his freedom to be in certain areas or associate with certain inmates. The decision to exclude an outside visitor does not affect in the same sense or degree the "freedoms" of association or placement within the prison. Furthermore, excluding a certain visitor but allowing others to visit the prisoner represents a relatively minor "deprivation." I recognize also that a state may create a liberty interest in freedom from even relatively minor deprivations. See *Hewitt v. Helms*, 459 U.S. 460, 470-71 (1983).

Applying these *Hewitt* criteria to the facts of this case presents a very close question for resolution. Prison officials had established guidelines for denying visits, but mere guidelines to "channel the decisionmaking of prison officials" do not create a liberty interest. *Hewitt*, 459 U.S. at 471. The question is whether the state went beyond mere guidelines by using "mandatory language" in connection with "specific substantive predicates," *id.* at 472, or, in the words of *Olim v. Wakinekona*, 461 U.S. 238 (1983), placed "substantive limitations on official discretion" with "particularized standards." *Id.* at 249.

The only "mandatory" language in the consent order or policy statements at issue appears once in the consent order—"Defendants shall continue their open visiting policy," 541 F. Supp. at 37—and once in the policy statement—"An inmate is allowed three separate visits per week." (Emphasis added). This is considerably less than the "repeated use" of mandatory language in the statute at issue in *Hewitt*. See 459 U.S. at 470 n.6 ("The inmate shall be notified . . . [a]n investigation shall begin immediately . . . the inmate must be released [if] . . . the institutional representative shall . . . [s]uch hearing shall be held within four (4) days . . .") (emphasis added).

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The degree of discretion left to the Kentucky prison officials in determining which visitors may be denied is not entirely clear. The policy provides that a visitor "may be denied a visit . . . if one or more of the following exists or there are reasonable grounds to believe that" one of the listed reasons exists. The policy also leaves the final decision and considerable discretion to deny a visit, "for the above reasons," to the Duty Officer.

This policy does not fall neatly into either of the categories outlined by *Bills v. Henderson*, 631 F. 2d 1287 (6th Cir. 1980). The guidelines arguably leave the Duty Officer with broad discretion and do no more than "channel [his] decision-making" along the stated guidelines. See *Hewitt*, 459 U.S. at 471. This policy does not, however, leave the Duty Officer with "complete discretion" to deny a visit for any reason or for no reason at all. Cf. *Olim*, 461 U.S. at 249; *Bills*, 631 F. 2d at 1293.

I doubt that the policy here involved establishes "particularized standards" or "objective and defined criteria" that place sufficient limitation on the officials' discretion to create a liberty interest. The policy at issue is not as detailed as some of the statutes and policies found to create liberty interests. See e.g., *Beard v. Livesay*, 798 F. 2d 874, 878 (6th Cir. 1986) (describing "very detailed procedures, together with the substantive limitation . . ."); *Franklin v. Aycock*, 795 F. 2d 1253, 1260 and 1260 n.5 (6th Cir. 1986) (rather detailed procedures). In this case, a visit can be denied only for listed reasons. In contrast, the procedures in *Wolff v. McDonnell*, 418 U.S. 539 (1974), for reporting and determining whether a prisoner committed "serious misconduct" were rather elaborate, see *id.* at 548-53 and n.8, and the Court decided that procedures were necessary

Opinion

because of the importance of the determination of serious misconduct.

I am mindful that other decisions not heretofore discussed in detail have found liberty interests to exist after consideration of the language involved in the statute or regulation. See *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979); *Bills v. Henderson*, 631 F. 2d 1287 (6th Cir. 1980); *Mayes v. Trammell*, 751 F. 2d 175, 178-79 (6th Cir. 1984).

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 85-5836

JAMES M. THOMPSON, Et Al., - *Plaintiffs-Appellees,*
v.

COMMONWEALTH OF KENTUCKY, DEPARTMENT
OF CORRECTIONS, Et Al., - *Defendants-Appellants,*
UNITED STATES OF AMERICA, - - - *Amicus Curiae*

Filed January 6, 1988

BEFORE: MERRITT, MARTIN and WELLFORD, Circuit Judges

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

(s) John P. Hehman
John P. Hehman, Clerk

SUPREME COURT OF THE UNITED STATES

**Office of the Clerk
Washington, D.C. 20543**

June 27, 1988

Ms. Barbara W. Jones
State Office Building
Room 500
Frankfort, KY 40601

Re: Kentucky, Department of Corrections, et al., v.
James M. Thompson, et al.
No. 87-1815

Dear Ms. Jones:

The Court today entered the following order in the above entitled case:

The motion of respondents for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari is granted.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk
(s) Joseph F. Spaniol, Jr.

PETITIONER'S BRIEF

5
No. 87-1815

Supreme Court, U.S.
FILED
AUG 5 1988

JOSEPH F. SPANGLER, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, Et Al, . . . Petitioners,

VERSUS

JAMES M. THOMPSON, Et Al, . . . Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

BRIEF FOR THE PETITIONERS

BARBARA WILLETT JONES*

Corrections Cabinet
Office of General Counsel
State Office Building
Room 500
Frankfort, Kentucky 40601
502/564-2024

Counsel for Petitioners

**LESLIE PATTERSON VOSE
LANDRUM & SHOUSE**

106 West Vine Street
P. O. Box 951
Lexington, Kentucky 40588-0951
606/255-2424

Counsel for Petitioners

*Counsel of Record

QUESTIONS PRESENTED

1. Whether prison guidelines for correctional staff use in admitting visitors create a liberty interest protected by the due process clause.
2. Whether a prison policy and procedure which does not affect the duration of or release from confinement or nature of confinement creates a constitutionally protected liberty interest.
3. Whether the use of some mandatory language in a prison policy so limits a duty officer's discretion that the policy in and of itself confers an entitlement to a particular visitor

LIST OF PARTIES

The parties to the proceedings below were the Petitioners, Commonwealth of Kentucky, Department of Corrections; David H. Bland, Commissioner; Dewey Sowders, Warden; James Dent, Principal Chaplain; James W. Stephens, Warden of Custody; Tom Campbell, Warden of Treatment; Harry Rothgerber, Member, Board of Parole; Steven T. Smith, Acting Superintendent; Burnett Napier, Chairperson of Kentucky Board of Parole; Glenn Wade, Member, Kentucky Board of Parole; Newton McCravy, Jr., Member, Kentucky Board of Parole; and John E. White, Member, Kentucky Board of Parole; and the Respondents, James Thompson, Wilgus Haddix, Leslie Branum, Walter Harris, Clifford Elliott, and George V. Sholar as representatives of the plaintiff class.

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No. 87-1815

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, ET AL., - - - *Petitioners*,
v.
JAMES M. THOMPSON, ET AL., - - - *Respondents*.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (J.A. 151-164) is reported at 833 F. 2d 614. The opinion of the district court (J.A. 145-150) is not reported.

JURISDICTION

The judgment of the court of appeals (J.A. 151-164) was entered on November 19, 1987. A petition for rehearing was denied on January 6, 1988 (J.A. 165). The petition for a writ of certiorari was filed on April 4, 1988, and was granted on June 27, 1988 (J.A. 166). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

This appeal concerns a visitation question arising from a prison conditions suit filed by the male offenders incarcerated at the Kentucky State Reformatory, LaGrange, Kentucky. On May 4, 1980 the parties below entered into a consent decree which addressed all conditions of confinement at the Reformatory.¹ *Kendrick v. Bland*, 541 F. Supp. 21 (W.D. Ky. 1981). (J.A. 2-44). With respect to visitation the consent decree provides:

The Bureau of Corrections encourages and agrees to maintain visitation at least at the current level with minimal restrictions. . . .

AND

. . . Defendants shall continue their open visiting policy at Kentucky State Reformatory. (J.A. 26)

The procedures referred to in the consent decree were set forth in the then Bureau of Corrections Internal Management Directive 403.086 and a Kentucky

¹At the request of the Commonwealth, in July, 1986, the district court conducted a three-week evidentiary hearing and found the Commonwealth of Kentucky in substantial compliance with all provisions of the consent decree, placed the case on its inactive docket until all construction was completed and released plaintiffs' counsel from further responsibility in the litigation. *Kendrick v. Bland*, 659 F. Supp. 1188 (W.D. Ky. 1987). This case had previously been consolidated with a similar class action involving the Kentucky State Penitentiary, the state's maximum security institution. The consent decree and hearing involved the Penitentiary, although the Penitentiary is not a party to this proceeding.

State Reformatory Warden's memorandum. (J.A. 88-93). These procedures have been revised and updated since but are substantially the same. They are now titled Corrections Cabinet Policies and Procedures [hereinafter referred to as Corrections procedures] and Kentucky State Reformatory Policies and Procedures [hereinafter referred to as Reformatory procedures].² (J.A. 98-139). The Corrections procedures are the general or "umbrella" procedures applicable to all institutions in the Commonwealth. Each penal facility in the Commonwealth has its own institutional procedures manual which contains even more specific instructions for all facets of daily prison management. (Pet. App. 3a-12a).

The Corrections and institutional procedures describe the daily management of all programs at the Reformatory. Many of these programs provide benefits to the inmates including visitation, furloughs, honor housing, mail, telephone calls, work assignments, study programs, general library services, inmate griev-

²The Corrections visitation procedures identified above are part of the Corrections procedures manual, which contains 28 chapters of procedures detailing the management of ten penal institutions and the division of probation and parole. 501 Kentucky Administrative Regulations 6:020E [hereinafter KAR]. (Pet. App. 3a-7a). The Reformatory visitation procedures referenced above are part of the Kentucky State Reformatory procedures manual, which consists of 25 chapters regulating and guiding the daily operation of the Kentucky State Reformatory. 501 KAR 6:030. (Pet. App. 7a-12a). All these procedures are administrative regulations promulgated pursuant to Kentucky Revised Statutes [hereinafter KRS] 197.020 and KRS 13A.120. (Pet. App. 1a-2a).

ances, inmate personal property, food services, outside trips, recreation, escorted leave, community center programs and inmate organizations. Some regulate substantive benefits such as access to courts, religious practices, loss of good time, parole revocation and medical care. This is by no means an exhaustive list of the areas regulated by Corrections and Reformatory procedures, selected samples of which are attached. (Pet. App. 13a-61a).³

The Reformatory procedures dealing with visitation are divided into twelve sections explaining visiting facilities, visiting hours, frequency and number of visitors per visit, types of visitors allowed and excluded, the identification process required, and dress code among others. These procedures contain approximately 19 pages of specific detailed instructions directed to the staff for the management of the visiting program at the Reformatory.

This action arose as a result of two incidents which occurred at the Kentucky State Reformatory concerning the suspension of visitation of certain individuals at the Kentucky State Reformatory. In one instance, prisoner Kenneth Bobbit's mother was denied visitation privileges for six months because she had brought

³Although the district court apparently did not review these selected samples in issuing its opinion, the regulations were filed as part of the original *Thompson v. Bland* record, and were considered by the district court in their entirety during the pendency of the class action litigation. See civil docket entries 5/27/86 Notice of Update KSR Policies and Procedures Manual and docket entries 948, 952, 975, and 981. (Ct. App. J.A.).

to the institution an individual by the name of Gerald Eastman who had previously been denied visiting privileges for having smuggled contraband into the institution. Mr. Eastman came to the institution with Mr. Bobbit's mother's assistance using a false identification to avoid being denied a visit. (J.A. 57-58, 65-70, 84).

In the second instance, inmate Kevin Black's mother and girlfriend were denied visitation privileges for a limited period of time after Kevin Black was convicted of possession of contraband discovered on his person immediately after a visit with his mother and girlfriend.

In January, 1986 plaintiff class filed a motion in the district court alleging that the suspension of their visitors' privileges without a due process hearing violated the open visitation policy of Section 12 of the consent decree and the Due Process Clause.⁴ (J.A. 56-69). Plaintiffs asked the district court to order the Reformatory to conduct due process hearings prior to the suspension of any visit and in an emergency, to conduct a post-suspension hearing.

The district court found that the consent decree established mandatory visitation protected by the Due Process Clause and ordered the Reformatory to implement minimal due process procedures, including notice

⁴Plaintiff class also argued that the visitation procedures were arbitrary, unreasonable and violated the supplemental partial consent decree, part V (J.A. 58) and that the procedures were so vague as to be arbitrary and unreasonable in their application. These issues were addressed by the district court, but are not an issue on appeal in the Sixth Circuit, nor before this Court.

to the inmate of and reasons for the revocation or suspension of visiting privileges and an opportunity for an inmate to respond (J.A. 145-150). The court did not determine whether the procedures themselves created a protected liberty interest but based its decision solely on the "mandatory" language contained in the consent decree.

On appeal Corrections challenged this finding that the consent decree references to visitation created a protected liberty interest. The Sixth Circuit affirmed the district court's finding of a protected liberty interest, but disagreed with the district court as to the source of the interest. It determined that the protected interest came from the specific language contained in the Corrections and Reformatory procedures, not from the consent decree⁵. (J.A. 151-164).

The following language of the Corrections procedures was reviewed by the Sixth Circuit:

Cabinet Procedures 403.06, Chapter 16:

Visitors Excluded

Certain visitors who are either a threat to the security or order of the institution or nonconducive to the successful re-entry of the inmate to the community may be excluded. These are, but not restricted to:

⁵The Sixth Circuit did consider and make reference to the "mandatory language" of the consent decree but concluded:

We do not reach, therefore, the issue of whether a consent decree can create a liberty interest enforceable beyond a district court's judicial power to enforce its orders. *Green v. McCastle*, 788 F. 2d 116, 1123-24 (5th Cir. 1986). (J.A. 160-161).

- A. The visitor's presence in the institution would constitute a clear and probable danger to the institution's security or interfere with the orderly operation of the institution.
- B. The visitor has a past record of disruptive conduct.
- C. The visitor is under the influence of alcohol or drugs.
- D. The visitor refuses to submit to search, if requested to do so, or show proper identification.
- E. The visitor is directly related to the inmate's criminal behavior.
- F. The visitor is currently on probation or parole and does not have special written permission from both his or her Probation or Parole Officer and the institutional Superintendent. (J.A. 146)

The court also reviewed the following Reformatory procedures:

REFORMATORY PROCEDURES STATEMENT
OF POLICY AND PURPOSE

Although administrative staff reserves the right to allow or disallow visits, it is the policy of the Kentucky State Reformatory to respect the right of inmates to have visits in the spirit of the court decisions and the consent decree, while insuring the safety and security of the institution. The following are the procedures to be enforced in regard to all types of visits. (J.A. 153-154).

• • •

. . . "[a]n inmate is allowed three (3) separate visits . . . per week." (J.A. 153).

1. A visitor may be denied a visit at any time if one or more of the following exists or there are reasonable grounds to believe that:

(a) The visitor's presence in the institution would constitute a clear and probable danger to the safety and security of the institution or would interfere with the orderly operation of the institution, including, but not limited to:

- (1) The visitor has a past record of disruptive conduct.
- (2) The visitor is under the influence of alcohol or drugs.
- (3) The visitor refuses to submit to search or show proper identification upon request.
- (4) The visitor is directly related to the inmate's criminal behavior.
- (5) The visit will be detrimental to the inmate's rehabilitation.
- (6) The visitor is a former resident currently on parole who does not have the approval of his Parole Officer or the Warden.
- (7) The visitor is a former resident who has left by maximum expiration of sentence and does not have the prior approval of the Warden.
- (8) The visitor has previously violated institutional visiting policies. (J.A. 153-154).

The court below found that the procedures substantively limited the officials' discretion and estab-

lished an interest protected by the Due Process Clause. Specifically, the court stated:

We turn now to the determination of whether the state went beyond the establishment of mere guidelines by using "mandatory language" in connection with "specific substantive predicates," *Hewitt*, 459 U.S. at 472. That is, whether the state, in the words of *Olim*, placed "substantive limitations on official discretion" with "particularized standards." *Olim*, 461 U.S. at 149. For the reasons set out below, we believe the state did do more than just establish guidelines. (J.A. 158-159).

. . . [G]iven the regulatory and mandatory language discussed above, a liberty interest was created under the circumstances here. (J.A. 160).

The Sixth Circuit then remanded the decision for further proceedings.

Defendants sought rehearing, arguing that this decision was contrary to the decisions of this Court, in particular: *Hewitt v. Helms*, 459 U.S. 460 (1983), *Greenholts v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979), and *Wolff v. McDonnell*, 418 U.S. 539 (1974); and, conflicted with the Sixth Circuit's own opinions.* Defendants further argued that if the decision was allowed to stand, corrections officials throughout the circuit could not draft any meaningful procedures affecting inmates without creating constitutionally protected liberty interests.

**Beard v. Livesay*, 798 F. 2d 874 (6th Cir. 1984); *Franklin v. Aycock*, 795 F. 2d 1253 (6th Cir. 1984); *Mayer v. Trammel*, 751 F. 2d 175 (6th Cir. 1984); *Bills v. Henderson*, 631 F. 2d 1287 (6th Cir. 1980).

The petition for rehearing was denied on January 6, 1988. (J.A. 165).

SUMMARY OF THE ARGUMENT

State drafted procedures do not create an entitlement protected by the Due Process Clause when they do not affect the duration of or release from confinement, or the very nature of confinement. A valid conviction leaves inmates with restricted liberty. Procedures detailing conditions well within the normally expected range of confinement do not infringe on the inmate's remaining interests while incarcerated. The purpose of prison visiting and other similar procedures is to provide reasonable and meaningful direction for staff use and thus they contain specific and clear directions. As a part of good prison management these procedures do provide benefits to prisoners, but to conclude that such procedures mandate due process would impede professional and effective prison management.

In this Court's decisions broad application of state created liberty interests has been consistently rejected. Only when the state regulation affected the duration of or release from confinement, or the substantive nature of confinement was dramatically altered and was combined with mandatory language, did this court conclude that the Due Process Clause was implicated. Because this Court has expressed concern over the expansion of this principle to the detriment of the prison administrator, limits are necessary and justifiable. A clear line should be drawn to separate those prison pro-

cedures which merely affect the circumstances of a prisoner's situation and which constitute relatively minor intrusions of an inmate's conditions from those affecting the substantive nature of his confinement or the length of or release from confinement.

ARGUMENT

Approximately twenty-seven years ago the Supreme Court began to review governmental regulations and statutes to determine if property interests were created which implicated the protection of the Due Process Clause. *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961); *Goldberg v. Kelly*, 397 U.S. 254 (1970). In 1972 this Court began to expand that review to determine whether governmental regulations could create a liberty interest warranting the protection of the Due Process Clause. *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972). In that same term this Court applied those principles of a state created liberty interest to a penal/correctional setting. Since 1972 this application has been reviewed in at least ten cases involving state regulations affecting prisoners.

In every instance the decisions have recognized without hesitation the difficult tasks prison administrators face daily. By acknowledging their primary function is to maintain security for the protection of inmates, staff, and the community, the Court has always recognized the need to balance an inmate's constitutional rights with these security needs. *Wolff v. McDonnell*, 418 U.S. 539 (1974). When implementing

this balancing, mutual accommodation test, this Court has rarely imposed constraints which would seriously hinder an administrator's ability to manage. The Sixth Circuit decision presents such an imposition.

The ruling below that visiting procedures require due process so expands this principle that virtually every state procedure directing staff management of inmate programs would require procedural due process. Administrators are now faced with a serious dilemma. They must cease writing meaningful and reasonable procedures directing staff action for the implementation of institutional programs or continue to write the same procedures and subject their staff to constant judicial scrutiny.

This case presents the question of whether corrections procedures which merely affect an inmate's circumstances while incarcerated should be treated as establishing a protected liberty interest. To find in the affirmative will penalize prison officials for implementing procedural guidelines which are a relatively minor imposition on a prisoner and will require federal supervision of daily prison operations.

I. ADMINISTRATIVE GUIDELINES SUGGESTING CRITERIA AND MINIMUM HOURS FOR VISITS DO NOT CONFER A CONSTITUTIONAL ENTITLEMENT.

A. The Purpose of Administrative Guidelines Is to Provide Guidance to Staff Who Must Deal With Visitation on a Daily Basis.

The Corrections and Reformatory procedures regulate the daily operations of a large penal facility.⁷

Corrections procedures serve as broad guidelines from which each institution develops its own procedures tailored to the nature and design of the particular institution. The Reformatory procedures regulate that facility in more detail, taking in account its population, number of staff and physical plant. The visiting procedures specify the hours of visitation, locations of visitation, identification of permissible entrances and exits for the visitors, clothing restrictions, and many other minutiae of the visiting program. The procedure is direct, precise and specific to provide management standards by which an administrator can supervise and discipline staff, if necessary, and to advise inmates and potential visitors what is expected. These visitation procedures are typical of most correctional visitation procedures throughout the country.

The restriction of visitors is a limitation well within the range of the conditions of confinement to which a prisoner is subjected. Thus, the development of procedures to instruct staff and to manage institutional programs do not and should not create a protected liberty interest.

⁷At the time the consent decree was signed, the Kentucky State Reformatory housed 2100 inmates. (J.A. 4). In June 1986 when the district court entered its opinion and order in this case the Reformatory housed approximately 1300 inmates (Pet. App. 62a). The 1986 population figures, not a part of this record on appeal, were a part of the record below for purposes of the consent decree compliance.

B. This Court Has Expressed Concern About Penalizing Prison Officials for Taking the "Salutary" Step of Adopting Guidelines.

The creation of specific guidelines with directive language is a "salutary" development in the evolution of a professional corrections management system. *Hewitt, supra* at 471 (1983). In cooperation with the Commission on Accreditation for Corrections, state officials and other corrections professionals formed the American Correctional Association [hereinafter ACA] and developed an accreditation program. This accreditation process encourages public accountability through an independent verification of performance in conjunction with providing administrators reasonable management guidelines. (See: *American Correctional Association Standards for Adult Correctional Institutions*, "Preface and Introduction," January 1981, January 1988) [hereinafter ACA Manual]. The ACA Manual requires that procedures for operating and maintaining an institution be "specified in a manual which is accessible to all employees and to the public." ("Standard 2-4016, *ACA Manual*")^{*}

Because the ACA Manual's purpose is to provide guidelines for comprehensive improvement of correctional systems and to provide a national framework for corrections, agencies and institutions are encouraged to exceed the minimum requirements for accreditation.

^{*}Each ACA Standard is designated as mandatory, essential, or important. In order to achieve accreditation all mandatory standards must be met. Ninety percent of the essentials and 80% of the important standards must be met.

(See: "Introduction," *ACA Manual*). The ACA Manual addresses inmate visitation. ("Standards 2-4381 to 2-4387, *ACA Manual*). Each standard requires written procedures describing location, time, length of visits, search procedures of visitors, exclusion of visitors and the like.^{*}

In considering whether the application of constitutional protections to these visiting procedures is appropriate, it is helpful to analyze other similar Reformatory procedures in order to consider the full impact of such a decision. The visitation procedures are typical of procedures regarding numerous programs available to inmates. ("Table of Contents," *ACA Manual*). Programs such as education, general library services, vocational education, recreation and honor housing are beneficial to the prisoners and serve as a management tool for administrators. Prison officials uniformly reserve the right to disallow prisoner participation in a program when such participation could constitute a security threat to other inmates, staff, the institution or the community.

As in the visiting procedures, the Reformatory general library procedures set out specific details regarding the operation and utilization of the library. These procedures govern the hours of operation, dress code, identification, number of books which can be checked out per inmate, and the curtailment of library

^{*}The Reformatory cites these standards in the introduction to its procedures and conforms with them in their entirety. The district court acknowledged the award of ACA Accreditation at the Reformatory in 1984 and 1986. *Kendrick v. Bland*, 659 F. Supp. 1188 (W.D. Ky. 1987).

privileges. (Pet. App. 32a-37a).¹⁰ Under an expanded analysis of the court of appeals decision these procedures would create a liberty interest requiring some procedural due process if library privileges are suspended. Likewise, Reformatory procedures establish guidelines for vocational, academic school programs, and inmate clubs. (Pet. App. 13a-32a, 38a-61a).¹¹ These procedures mandate that vocational and academic guidance counselors will conduct a formal re-enrollment and an initial assessment process one day each week.

Do the federal courts need or want to provide judicial review of the daily operation of general libraries or educational programs? Imposing judicial scrutiny over these kinds of prison procedures depreciates the Fourteenth Amendment and the Due Process Clause and penalizes the administrator for implementing professional guidelines.

¹⁰Although these specific policies were not before the Sixth Circuit, all Reformatory procedures were filed with the district court as part of the case in its entirety. General library services are required in the consent decree (J.A. 9) and conforming with all policies was a part of the compliance hearing and order.

¹¹Similarly, these educational and club programs were required to be continued under the consent decree. (J.A. 7-10).

C. Transforming Internal Prison Procedures Into Constitutionally Protected Rights Trivializes the Fourteenth Amendment.

Prison procedures mandating staff action which may beneficially affect an inmate but do not result in consequences qualitatively different from the punishment characteristically suffered by a convicted felon, should not create a liberty interest. Where the consequences are within the range of conditions of confinement to which a prison sentence subjects an individual, procedures cannot create a protected liberty interest unless the action, independent of state regulation, violates a substantive constitutional right; or, unless the procedure affects the duration of or release from confinement or the very nature of confinement.

Federal court supervision or scrutiny could arguably be avoided if every Corrections/Reformatory procedure was couched in terms of "may" instead of "shall" or by adding catch-all phrases such as "or for any reason that the prison administrator sees fit." While the addition of such phrases may be desirable and necessary to avoid a state created liberty interest, such mechanical language changes do not assist the administration in supervising staff.

These visiting procedures are directed to the staff and visitor more than to the inmate. In many instances a visitor is denied entry for reasons unrelated to the inmate, e.g. criminal record, improper dress, intoxication or some misconduct prior to entry. The inmate usually has no direct knowledge of the circumstances of the denial of the visit. Thus what purpose would

procedural protection serve an inmate and for whom is the entitlement created, the inmate or the visitor? Surely this Court would not want to open the doors to judicial review of the daily denial of visits at a prison.

This Court should draw a clear line separating state procedures affecting the length, duration, or inherent nature of confinement from those procedures which merely affect the daily operation of an institution while at the same time providing benefits to an inmate. Such a standard is fair to inmates and staff, and it continues to promote the progressive professionalism of corrections. It substantially decreases a state's opportunity to define and limit federal court intrusion or scrutiny of the corrections systems by mere word changes. Such a standard promotes the promulgation of clear regulations for the orderly management of correctional facilities, and is consistent with the constitutional structures where substantive rights have been clearly recognized and defined.

II. MUTUAL ACCOMMODATION OF SECURITY NEEDS WITH CONSTITUTIONAL RIGHTS HAS BEEN THE TOUCHSTONE OF DECISIONS AFFECTING INMATES.

A. Only Procedures Affecting the Length of or Release From Confinement, or the Nature of Confinement Written in Mandatory Style Create Protected Interests.

Although prisoners do not shed all constitutional rights at the prison doors, it is clearly established that when a corrections administrative procedure impinges on a substantive right there must be a mutual accommo-

dation between institutional needs and objectives and those rights. As long as the penological justification for those procedures is not greatly exaggerated, deference is owed the prison administrator. *Procunier v. Martinez*, 416 U.S. 396 (1974); *Pell v. Procunier*, 417 U.S. 817 (1974); *Turner v. Safley*, — U.S. — 107 S. Ct. 2254 (1987); *O'Lone v. Estate of Shabazz*, — U.S. — 197 S. Ct. 2400 (1987).

An inmate's liberty interest is severely diminished by the fact of his conviction and sentencing to a period of penal incarceration. Unless the conditions therein are "cruel and unusual" or unjustifiably interfere with substantive rights all other restrictions are within the normal limits expected in a penal facility. *Rhodes v. Chapman*, 452 U.S. 337 (1981). An inmate has no constitutional right to expect to meet with any visitor of his choice, nor do citizens have a constitutional right to visit specific inmates. *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119 (1977); *Bellamy v. Bradley*, 729 F. 2d 416 (6th Cir.), cert. denied, 469 U.S. 845 (1984). Respondents conceded that absent the Corrections and Reformatory procedures and/or the consent decree, inmates have no constitutionally protected interest. (Br. in Opp. 6-7).¹²

This Court has recognized in a few cases that state-drafted prison procedures can create a protected liberty interest. In virtually every such case the procedures were written in mandatory style and affected

¹²The Commonwealth does not include meeting with clergy and/or counsel in this definition of "visitor" as applied in this case.

the length of or release from confinement or involved a substantive change in the nature of the confinement, such as involuntary commitment to a mental hospital. *Morressey v. Brewer*, 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Vitek v. Jones*, 445 U.S. 480 (1980).

Recognizing no constitutional right to parole existed, nonetheless in *Morressey* and *Gagnon*, *supra*, this Court extended procedural due process protection to the parole/probation revocation setting where an individual under "limited custody" (parole/probation supervision), violated the terms of his "conditional liberty" and was reincarcerated. A parolee's condition "is very different from that of confinement in a prison." *Morressey* at 495. See also *Greenholts v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979).

Parole/probation situations involve the traditional notions of liberty as they clearly affect an inmate's release from confinement. In these decisions the state procedures had imposed mandatory conditions on the parolee and revocation was mandatory if the conditions were violated. Although the Court did not focus its ruling on the states' procedural language in the early parole/probation revocation decisions as in later cases, their existence was important in the court's analysis of the nature of the interest and the process due.

This rationale of procedural due process protection stemming from state law regulations was narrowly applied to internal disciplinary hearings involving a potential loss of good time credit. Loss of good time

was viewed as affecting the length of confinement, therefore, traditional notions of liberty again were at stake. *Wolff v. McDonnell*, 418 U.S. 539 (1974). The state procedures also contained mandatory language prohibiting the loss of good time unless major misconduct was demonstrated. Here, as in *Greenholts*, *supra*, the Court begins to examine more closely the specific language of the state procedures.

B. General Administrative Procedures Affecting Conditions Within the Normal Range of Confinement Do Not Create Liberty Interests.

This state-created entitlement theory has not been broadly expanded, even in cases involving similar relief questions. For example, this Court refused to extend the entitlement theory where inmates alleged a consistent practice of pardon had created a "de facto" expectation protected by the Due Process Clause:

Greenholts pointedly distinguished parole revocation and probation revocation cases, noting that there is an internal "critical" difference between denial of a prisoner's request for initial release on parole and revocation of a parolee's conditional liberty. (citations omitted) . . .

Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 464 (1981). The Court reviewed the state regulations affecting pardons and found the language to be non specific permitting unfettered discretion. Although this analysis was not the primary focus of the decision it was considered.

Likewise, the withdrawal of shock probation by a parole authority prior to the actual physical release of

an inmate did not implicate the Due Process Clause because he was already incarcerated and it did not affect "any conditional liberty." *Jago v. Van Curen*, 454 U.S. 14, (1981). *Jago* rejected the creation of a liberty entitlement by contract or a "mutually explicit understanding" theory, as it would severely restrict the necessary flexibility of prison administrators who make a myriad of decisions involving individual inmates.

The notion that state procedures authorizing the transfer of incarcerated inmates from one prison to another within the same system, or even to a more restrictive environment within the system, or from a prison in one state to a prison in a different state would create a protected liberty interest has been rejected:

As long as the conditions or degree of confinement to which the prisoner is subjected are within the sentence imposed upon him and are not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight. The Clause does not require hearings in connection with transfers whether or not they are the result of the inmate's misbehavior or may be labeled as disciplinary or punitive.

Montanye v. Haymes, 427 U.S. 236, 242 (1976).

Meachum, rejected the argument that "any" changes in the conditions of confinement which may have an adverse impact on a prisoner triggers the procedural protection of the Due Process Clause: "[G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty interest to the

extent the State may confine him and subject him to the rules of its prison system so long as the conditions and confinement do not otherwise violate the Constitution." *Meachum v. Fano* 427 U.S. 215, 224 (1976). Even a "grievous loss" visited upon an inmate by the state is insufficient to automatically trigger due process. *Id.* at 224.

In *Olim*, this Court considered the applicability of due process protection where an inmate was singled out as a trouble maker and transferred from Hawaii to California pursuant to extensive, detailed state-drafted procedures. These procedures tacitly acknowledged that an out of state transfer was a "grievous loss" and mandated written notice, a pre-transfer hearing allowing confrontation and cross-examination of witnesses and counsel. *Olim v. Wakinekona*, 461 U.S. 238, 241-2, N. 2-3, (1983). However, the ultimate decision maker could, without any limitations, accept or reject the committee's recommendation following the due process hearing. *Olim* concluded that confinement in another state is within the normal limits or range of custody which the conviction has authorized the state to impose and declined to extend due process protection.

In *Meachum*, *supra*, *Montanye*, *supra*, and *Olim*, *supra* even though the state had procedures in effect for interstate/intrastate transfers these were analyzed by the Court as being general in nature and permitted unfettered discretion by the decision maker. Thus interstate/intrastate transfers did not affect the very nature of confinement, in fact were clearly within the

normal limits or range of custody and certainly had no affect on release from or duration of confinement.

C. A Dramatic Impact on the Very Nature of Confinement Coupled With Mandatory State Procedures Can Create Liberty Interests.

The involuntary transfer of a state prisoner to a mental hospital along with mandatory behavior modification treatment implicated the Due Process Clause. Involuntary commitment to a mental hospital is not within the range of conditions of confinement to which a prison sentence subjects an individual. "A criminal conviction and sentence of imprisonment extinguish an individual's right to freedom from confinement for the term of his sentence, but they do not authorize the state to classify him as mentally ill and to subject him to involuntary psychiatric treatment without affording him additional due process protection." *Vitek v. Jones*, 445 U.S. 480, 493-4 (1980).

Vitek, supra, also concluded state drafted procedures addressing involuntary commitment permitted no discretion by the decision maker. Thus, a dramatic change in the nature of confinement coupled with mandatory state procedures warranted procedural protection. Once again the court warned against invoking procedural due process when "any" change in the condition of confinement occurred or if any "grievous loss" is suffered.

This Court has consistently but narrowly held if a state through its own regulations, affects the duration of or release from confinement, or dramatically alters the nature of confinement procedural protection

is warranted, if the state imposes substantive limits on the decision maker.

In only two cases has this Court reluctantly and guardedly concluded that a particular statutory framework could create a liberty interest in remaining in general population. *Enomoto v. Wright*, 434 U.S. 1052 (1978) aff'd per curiam, *Wright v. Enomoto*, 462 F. Supp. 397 (N.D. 1976); *Hewitt v. Helms*, 459 U.S. 460 (1983). In *Wright, supra* the three judge court determined confinement to maximum security segregation for disciplinary reasons coupled with the state procedures which substantively limited the discretion of the decision maker was an impairment of a prisoner's liberty.¹⁸ Again the combination of factors were present and reviewed in the analysis: an alteration of the very nature of confinement and a mandatory state procedure.

In *Hewitt, supra*, this Court reviewed state drafted mandatory procedures involving an assignment to administrative segregation. Although this Court found such a confinement was not protected by the Due Process Clause the "restraints" coupled with mandatory procedures gave rise to a protected interest. This Court cautioned against broadly expanding this theory that could serve to the detriment of prison administrators and recognized:

There are persuasive reasons why we should be loath to transpose all of the reasoning in the cases

¹⁸The Court relied on *Baxter v. Palmigiano*, 425 U.S. 308 (1976) and *Wolff, supra*.

just cited to the situation where the statute and regulations govern the day to day administration of a prison system.

The deprivations imposed in the course of the daily operations of an institution are likely to be minor when compared to the release from custody at issue in parole decisions and good time credits. Moreover, the safe and efficient operation of a prison on a day to day basis has traditionally been entrusted to the expertise of prison officials, see *Meachum v. Fano, supra*, 427 US, at 225, 40 L. Ed 2d 451, 96 S. Ct. 2532. These facts suggest that regulations structuring the authority of prison administrators may warrant treatment, for purposes of creation of entitlements to "liberty," different from statutes and regulations in other areas. *Hewitt* at 470.

The combination of factors again were present: the nature of confinement and mandatory procedures.

In this case the state visiting procedure, standing alone, was found to have created a protected liberty interest only because of its mandatory language. The substance of the Court's analysis did not focus primarily on whether the procedures involved the duration of or release from confinement or whether the very nature of confinement was altered in conjunction with mandatory state procedures. In fact, the court clearly recognized that the visiting procedures involved a relatively minor deprivation. (J.A. 157).

As described in this argument the combination of factors found in each case where this Court found a

protected liberty interest are not present. Visiting procedures and other similar procedures which address the management of institutional programs have no impact on the duration of or release from confinement. They may affect the conditions of confinement adversely but not to an extent that approaches a change in the very nature of confinement like those in *Wright, supra*, *Vitek, supra* and *Hewitt, supra*. Nor can the visiting restrictions be perceived as a "grievous loss" to such an extent that the impact here is more significant than the interstate/intrastate transfers, in *Montanye, supra*, *Meachum, supra* and *Olim, supra*. To find that such routine procedures create a protected liberty interest which mandates federal court scrutiny will transfer to the federal judiciary the daily operation of a prison traditionally entrusted to the expertise of prison administrators.

III. DISTINCTION BETWEEN MANDATORY LANGUAGE AND GUIDELINES ALONE IS AN INSUFFICIENT BASIS FOR DETERMINING THE EXISTENCE OF A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST.

A. State Drafted Procedures Including Some Mandatory Language Standing Alone Cannot Create a Liberty Interest.

In lieu of the internal/external liberty analysis discussed in Argument II above, the question of whether state procedures create a constitutionally protected liberty interest has also been analyzed extensively in

the circuits by examining state drafted language.¹⁴ This inquiry focuses on whether inmates have an entitlement because the state's language alone has limited a prison officials' discretion and given particularized standards or criteria to guide the decision maker. This analysis by the circuits involves an inquiry into whether the state went beyond the establishment of mere guidelines by using "mandatory language," placing substantive limitations on official discretion with

¹⁴*Santiago v. Garcia*, 821 F. 2d 822 (1st Cir. 1987), language affecting isolation or transfer limits discretion, liberty interest; see also *Stokes v. Pair*, 795 F. 2d 235 (1st Cir. 1986); *Matiya v. Henderson*, 841 F. 2d 31 (2nd Cir.), cert. den'd 106 S. Ct. 2876 (1988) regulations re (seg.) limits discretion, liberty interest; see also *Hall v. Unknown Named Agents*, 825 F. 2d 642 (2nd Cir. 1987), criteria for involuntary diagnostic and treatment transfer does not limit discretion, no liberty interest; *Stephany v. Wagner*, 835 F. 2d 497 (3rd Cir.), cert den'd 106 S. Ct. 2851 (1988) county administrative seg. procedures with criteria did not limit discretion, no liberty interest; *Hayes v. Thompson*, 726 F. 2d 1015 (4th Cir. 1984), *Olim* and *Hewitt*, overruled principle that regulations alone cannot create protected interest; *Green v. Farrell*, 801 F. 2d 765 (5th Cir. 1986), County does not limit discretion in "tight ceiling" for nonpunitive segregation, no liberty interest; *Culbert v. Young*, 834 F. 2d 624 (7th Cir.), cert den'd 106 S. Ct. 1296 (1988), criteria for major/minor violation does not limit discretion, no liberty interest; *Muhammad v. Carlson*, 845 F. 2d 175 (8th Cir. 1988), mandatory aids procedures were not intended to limit discretion, no liberty interest; see also *Parker v. Corrothers*, 750 F. 2d 653 (8th Cir. 1984), parole statute, no entitlement; parole regulations, entitlement because of criteria; *Bauman v. Arizona Department of Corrections*, 754 F. 2d 841 (9th Cir. 1985), criteria does not limit discretion, no interest; *Francis v. Fox*, 838 F. 2d 1147 (11th Cir. 1988), criteria for work release does not limit discretion, no liberty interest; see also *Whitehorn v. Harrelson*, 758 F. 2d 1416 (11th Cir. 1985), liberty interest in work release in close question.

particularized standards, or merely used "channeling language" which suggest considerations for the decision maker, but does not limit his or her discretion.

It is remarkable that state procedures in and of themselves without regard to their impact on confinement can create a protected liberty interest. No other explanation can resolve the result below as well as the results in the circuits. These program procedures should not be protected by the Due Process Clause. To support such a ruling does nothing more than penalize a corrections administrator who has embraced the "salutary" development and has responsibly pursued the professional management of a penal system.

Visitation procedures which give correctional staff written guidelines to apply when managing a visitation program do not create a constitutionally protected liberty interest even when 1) those procedures include suggested criteria for consideration when a visitor is denied entry into the institution, and when 2) such policies include a minimum level of visiting per inmate per week. Relying on *Hewitt*, the Sixth Circuit applied this mandatory/channeling distinction alone, holding that the Commonwealth had gone beyond simple procedural guidelines, using "language of an unmistakable mandatory character" such as "shall", "will," or "must" in connection with specific substantive predicates and this created a protected liberty interest. Presumably based on this analysis, the state would have to provide due process where inmates' library check-out privileges are suspended for failure

to return a book or if inmate clubs are terminated. (Pet. App. 35a, 40a-41a). Just to require due process procedures for a percentage of 1300 inmates or more when visiting is restricted is an enormous burden.

The mandatory/channeling language distinction analysis without more is inadequate for use as the determinative factor in whether a state procedure creates a protected liberty interest. This makes any attempt to evaluate procedures, depend on the reader's interpretation of the language, permitting no review of the purpose and intent of the policy and whether it affects duration of or release from confinement or the nature of the confinement.

B. State Drafted Procedures Creating a Relatively Minor Imposition on Confinement Cannot Create a Protected Interest.

As outlined in Argument I above, in an effort to manage staff and provide inmate benefits, many of the procedures at the Kentucky State Reformatory repeatedly use "will", "shall", and similar directive or mandatory language. It is artificial and inappropriate to let the state determine the contours of a federally protected interest when mere mechanical word choices could alter the result. Under this analysis federal scrutiny of state law or administrative procedures could be avoided by adding catch-all phrases like "or for any other reason at discretion of the officer," or conclusory language beneficial to no one, or a complete absence of guidelines to aid management staff.

Retaining the mandatory/channeling distinction creates confusion and provides little guidance for courts and administrators, evidenced by the disparity among the circuits. It is not possible for a state to write meaningful and directive procedures regarding any facet of daily prison life, including inmate programs, without using mandatory language for staff use. Failure to provide clear language with substantive content would likely result in arbitrary and inconsistent decision making, a result which this Court clearly wants to avoid. If the mandatory/channeling distinction without more remains viable states would be forced to choose between vague or no policies or meaningful procedures with due process hearings and federal court review.

CONCLUSION

The judgment of the Court of Appeals finding that the Reformatory Procedures created a liberty interest protected by the Due Process Clause should be reversed.

P Respectfully submitted,

BARBARA WILLETT JONES
Corrections Cabinet
Office of the General Counsel
State Office Building
Room 50C
Frankfort, Kentucky 40601
502/564-2024

Counsel for Petitioners.

LESLIE PATTERSON VOSE
LANDRUM & SHOUSE
106 West Vine Street
P. O. Box 951
Lexington, Kentucky 40588-0951
606/255-2424

Counsel for Petitioners

August 1988

APPENDIX

13A.120 Adoption of administrative regulations; prohibitions concerning promulgations

(1) An administrative body may adopt administrative regulations to implement a statute only when the act of the general assembly creating or amending the statute specifically authorizes the adoption of such regulations or such regulations are required by federal law, in which case such regulations shall be no more stringent than the federal law or regulations, but an administrative body shall not promulgate administrative regulations:

(a) When a statute prohibits the administrative body from promulgating administrative regulations;

(b) When the administrative body is not authorized by statute to promulgate administrative regulations;

(c) When a statute prohibits the administrative body from regulation of that particular matter;

(d) When the administrative body is not authorized by statute to regulate that particular matter;

(e) When a statute prescribes the same or similar procedure for the matter regulated;

(f) When a statute sets forth a comprehensive scheme of regulation of the particular matter;

(g) On any matter which is not clearly within the jurisdiction of the administrative body;

(h) On any matter which is beyond the statutory authorization of the administrative body to promulgate administrative regulations or which is not clearly authorized by statute; and

(i) Which modify or vitiate a statute or its intent.

(2) Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.

(3) No administrative body, other than the Court of Justice shall issue rules.

(4) No administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required or authorized by law.

HISTORY: 1986 c 499, § 8, eff. 7-15-86

1984 c 417, § 12

197.020. Regulations to be made by corrections cabinet.

—The corrections cabinet shall:

(1) Formulate and prescribe all necessary regulations and bylaws for the government and discipline of the penitentiary, the rules for the government and official conduct of all officials connected with the penitentiary and for the government of the prisoners in their department and conduct;

(2) Prescribe the character of food and diet of the prisoners and rules for the preservation of the health of the prisoners, the daily cleansing of the penitentiary, the cleanliness of the persons, of the prisoners, the general sanitary government of the penitentiary and prisoners, the character of the labor, and quantity of food and clothing, and the length of time during which the prisoners shall be employed daily; and

(3) Cause the rules and regulations prescribed by them, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.

(216c-4: amend. Acts 1966, ch. 255, § 188; 1974, ch. 74, Art. V, § 24(14); 1982, ch. 344, § 21, effective July 15, 1982).

OFFICE OF THE SECRETARY—TITLE 501, CHAPTER 6

CHAPTER 6

OFFICE OF THE SECRETARY

020E. Corrections policies and procedures.

030. Kentucky State Reformatory.

040E. Kentucky State Penitentiary.

050. Luther Luckett Correctional Complex.

060E. Northpoint Training Center.

070. Kentucky Correctional Institute for Women.

080E. Corrections Cabinet manuals.

090. Frankfort Career Development Center.

110. Roederer Farm Center.

120. Blackburn Correctional Complex.

130. Western Kentucky Farm Center.

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: June 15, 1987

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section I. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on June 12, 1987 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the

Office of the General Counsel, Corrections Cabinet, State
Office Building, Frankfort, Kentucky 40601.

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
- 2.1 Inmate Canteen
- 2.10 Surplus Property
- 3.1 Code of Ethics
- 3.2 Inclement Weather and Emergency Conditions Policy
- 3.3 Holding of Second Jobs by Bureau Employees
- 3.7 Employment of Relatives
- 3.10 Staff Clothing and Personal Appearance
- 3.12 Institutional Staff Housing
- 3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
- 4.1 Attendance at Professional Meetings
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.4 Educational Assistance Program
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.4 Emergency Preparedness
- 9.1 Use of Force
- 9.3 Transportation of Convicted Offenders
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/12/87)
- 9.5 Return of Escapees by Automobile
- 9.6 Contraband (Amended 6/12/87)
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents

- 9.8 Search Policy
- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control
- 9.15 Institutional Entry and Exit Policy and Procedures
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.1 Inmates Serving a Sentence of Death
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 12.1 Resident Clothing
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15.4 Governor's Meritorious Good Time Award
- 15.5 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 16.1 General Inmate Visiting Procedure
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages (Amended 6/12/87)
- 17.1 Inmate Personal Property (Amended 6/12/87)
- 17.2 Assessment Center Operations

- 17.3 Controlled Intake of Inmates (Amended 6/12/87)
- 18.4 Classification of the Inmate
- 18.5 Custody/Security Guidelines
- 18.6 Classification Document
- 18.7 Transfers
- 18.8 Guidelines for Transfers Between Institutions
- 18.9 Out-of-State Transfers
- 18.10 Pre-Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
- 18.13 Population Categories
- 18.15 Protective Custody
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 20.1 Study Release
- 20.6 Vocational Study Release
- 22.1 Privilege Trips
- 25.1 Gratuities
- 25.2 Public Official Notification of Release of an Inmate
- 25.3 Pre-Release
- 25.4 Inmate Furloughs
- 25.6 Community Center Program
- 25.7 Expedient Release
- 25.8 Extended Furloughs
- 27.1 Supervision: Case Classification
- 27.2 Risk/Needs Administration
- 27.4 Supervision Plan: General
- 27.8 Travel Restrictions
- 27.9 Conditions of Supervision
- 27.10 Preliminary Revocation Procedures
- 27.11 Apprehension and Transportation of Violators of Probation, Parole and Conditional Release
- 27.12 Fugitive Section/Probation and Parole

- 27.13 Supervision Fee
- 27.14 Interstate Compact
- 27.18 Absconder Procedures
- 27.19 Technical Violators
- 27.20 Intensive Supervision
- 28.2 Investigations: General
- 28.3 Pre-Sentence Investigations (To the Court)
- 28.4 Pre-Parole (Pre-Sentence) Investigation (To the Institution and State Parole Board)
- 28.5 Special Report to the Parole Board
- 28.7 Out-of-State Investigations (14 Ky. R. 10; eff. 6-15-87)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on May 15, 1987 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSR 01-00-09 Public Information and News Media Relations

KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution

KSR 01-00-14 Extraordinary Occurrence Report
 KSR 01-00-15 Cooperation and Coordination with Oldham
 County Court
 KSR 01-00-19 Personal Service Contract Personnel
 KSR 01-00-20 Consent Decree Notification to Inmates
 KSR 02-00-01 Inmate Canteen
 KSR 02-00-03 Screening Disbursements from Inmate Per-
 sonal Accounts
 KSR 02-00-11 Inmate Personal Accounts
 KSR 02-00-12 Institutional Funds and Issuance of Checks
 KSR 03-00-01 Shift Assignment/Reassignment
 KSR 03-00-02 Employee Dress and Personal Appearance
 KSR 03-00-05 Intra-Agency Promotional Opportunity An-
 nouncements
 KSR 03-00-06 Employee Time and Attendance
 KSR 03-00-07 Travel Expense Reimbursement
 KSR 03-00-08 Employee Tuition Assistance Reimburse-
 ment
 KSR 03-00-10 Workers' Compensation
 KSR 03-00-14 Prohibited Employee Conduct, Disciplinary
 Actions, and Appeal Process
 KSR 03-00-15 Affirmative Action Program
 KSR 03-00-16 Confidentiality of Personnel Records
 KSR 03-00-19 Establishment of Personnel Records and
 Employee Right to Challenge Information
 Contained Therein
 KSR 03-00-20 Personnel Selection, Retention and Promo-
 tion
 KSR 03-00-21 Equal Employment Opportunities for Insti-
 tutional Job Assignments and Job Classifi-
 cation Promotions
 KSR 03-00-24 Inclement Weather and Employee Work
 Attendance
 KSR 03-00-25 Medical Examination Requirements for New
 Employees

KSR 04-00-02 Staff Training and Development
 KSR 05-00-02 Research Activities
 KSR 05-00-03 Management Information Systems
 KSR 06-00-01 Inmate Master File
 KSR 06-00-02 Records Audit
 KSR 06-00-03 Kentucky Open Records Law
 KSR 07-00-02 Institutional Tower Room Regulations
 KSR 07-00-03 Guidelines for Contractors
 KSR 07-00-04 Handling of PCB Articles and Containers
 KSR 07-00-05 Proper Removal of Transformers (Added
 5/15/87)
 KSR 08-00-07 Inmate Family Emergency—Life Threaten-
 ing Illness or Death in Inmate's Immediate
 Family
 KSR 08-00-08 Death of an Inmate/Notification of Inmate
 Family in Case of Serious Injury, Critical
 Medical Emergency, Major Surgery
 KSR 08-00-09 Emergency Preparedness Training
 KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit
 Procedure
 KSR 09-00-05 Gate I Entrance and Exit Procedure
 KSR 09-00-14 Use of Force
 KSR 09-00-21 Crime Scene Camera
 KSR 09-00-22 Collection, Preservation, and Identification
 of Physical Evidence
 KSR 09-00-23 Drug Abuse Testing
 KSR 09-00-25 Inmate Motor Vehicle Operator's License
 KSR 09-00-26 Contraband Outside Institutional Perimeter
 KSR 10-00-02 Special Management Inmates Operations,
 Rules and Regulations for Unit D
 KSR 10-00-03 Special Needs Unit
 KSR 10-00-04 Unit D Admission/Release Ticket
 KSR 11-00-01 Meal Planning for the General Population
 KSR 11-00-02 Special Diets
 KSR 11-00-03 Food Service Inspections

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KSR 11-00-04	Dining Room Dress Code for Inmates
KSR 11-00-06	Health Standard / Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-02	Sanitation and General Living Conditions
KSR 12-00-03	State Items Issued to Inmates (Amended 5/15/87)
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 13-00-01	Identification of Mentally Retarded Inmates
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Dental Care for Inmates
KSR 13-00-05	Medical and Dental Sick Call
KSR 13-00-07	Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12	Vision Care/Optomety Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 14-00-01	Inmate Rights
KSR 14-00-02	A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 14-00-04	Inmate Grievance Procedure
KSR 14-00-06	Inmate Legal Aides (Added 5/15/87)
KSR 15-00-01	Operational Procedures and Rules and Regulations for Unit A, B, and C

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KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-03	Governor's Meritorious Good Time Award
KSR 15-00-04	Restoration of Forfeited Good Time
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline—Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 16-00-01	Visiting Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 17-00-01	Housing Unit Assignment
KSR 17-00-03	Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
KSR 17-00-04	Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property (Amended 5/15/87)
KSR 18-00-01	Special Management Inmates—Unit D Classification
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center
KSR 18-00-06	Classification
KSR 18-00-07	Special Notice Form
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-Job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations

- KSR 20-00-01 Vocational School Referral and Release Process
- KSR 20-00-03 Academic School Programs
- KSR 20-00-04 Criteria for Participation in Jefferson Community College Program
- KSR 20-00-08 Integration of Vocational and Academic Education Programs
- KSR 21-00-01 Legal Aide Office and Law Library Services and Supervision (Amended 5/15/87)
- KSR 21-00-02 Inmate Library Services (Amended 5/15/87)
- KSR 21-00-03 Library Services for Unit D
- KSR 22-00-03 Inmate Organizations (Amended 5/15/87)
- KSR 22-00-07 Inmate News Magazine
- KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
- KSR 23-00-03 Religious Programming
- KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home
- KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
- KSR 25-00-03 Pre-Parole Progress Report

(12 Ky.R. 1797; eff. 6-10-86; Am. 1845; eff. 7-2-86; 13 Ky.R. 53; eff. 8-12-86; 281; eff. 10-2-86; 525; eff. 10-2-86; 737; eff. 11-11-86; 935; eff. 12-2-86; 1246; eff. 2-10-87; 1641; eff. 4-14-87; 1715; eff. 5-14-87; 1897; eff. 6-9-87; 2041; eff. 7-2-87).

Corrections Cabinet

Kentucky State Reformatory

PROCEDURES MEMORANDUM

NUMBER: KSR 20-00-01 — Rev. 3

DATE ISSUED: June 10, 1987

EFFECTIVE DATE: June 8, 1987

SUBJECT:

VOCATIONAL SCHOOL REFERRAL AND RELEASE PROCESS

STATEMENT OF POLICY AND PURPOSE

The Kentucky State Reformatory provides all inmates, who can benefit from and have an interest in vocational education, an opportunity to participate in job entry level vocational education courses and counseling designed to develop employment potential of inmates who lack marketable skills. The process for enrollment and acceptance of inmates into this program is governed by the procedure, which is designed to ensure that inmates are placed in a program most suited to their needs and abilities at the time of referral.

Additionally, the institution must ensure a conducive atmosphere in which an inmate may pursue a vocational trade. An inmate cannot learn a trade if he becomes disinterested in the area in which he is working. He cannot learn if he is unable or unwilling to abide by institutional and school guidelines, such as attendance, punctuality or other disciplinary rules. The process for release of inmates, both voluntary and involuntary, is governed by the procedure to ensure an atmosphere conducive to learning in the Vocational School.

REFERENCE

American Correctional Association Standards for Adult Correctional Institutions, 1981, Sections 2-4434, 2-4435
Corrections Policies and Procedures Chapter 20.3

PROCEDURE

A. Vocational School Application/Enrollment Process

1. Any inmate interested in attending the vocational school may request to apply for the regular enrollment process during school hours Monday-Friday. Residents may be referred by any staff to the School Guidance Counselor/Principal/Secretary or resident school clerk.
2. The Vocational School Guidance Counselor will conduct a formal enrollment and initial assessment process one day each week. The completed enrollment process consists of:
 - a. Completed application and vocational school training agreement forms with signature and date (See attachments 1 & 2).
 - b. An assessment of academic level, vocational ability, interest, and individual performance.
 - c. Completes a scheduled interview with the guidance counselor and appropriate vocational program instructor.
 - d. Admission and retention in Vocational School will be determined by the applicable guidelines written in: Kentucky State Reformatory Policies and Procedures, Chapter 20-00-03, Vocational Education Policies and Procedures, Contractual Agreements between Vocational Education and Department of Corrections.

3. After the formal enrollment process has been completed the resident may:
 - a. Be approved for attendance and will be notified by vocational staff, and the vocational school will place the inmate's name on the institutional move sheet.
 - b. Be placed on a waiting list if no immediate opening exists in the desired program—and be advised when an opening is available.
 - c. Be assigned to a Vocational Exploration assignment within the vocational school or other alternative planning considered.

B. Release from Vocational School

1. If an inmate voluntarily requests to be released from Vocational School, the Vocational School Release will be completed. (Attachment 3)
 - a. The inmate makes a request to be released from the program to his vocational instructor.
 - b. The vocational teacher will send the inmate to the Guidance Counselor to be interviewed and complete the release form. The inmate, Guidance Counselor/Principal, and instructor will sign and date the form in the spaces provided.
 - c. If the inmate requesting release from the program has not been in the vocational school at least 90 days, a Breach of Agreement is issued. (Attachment 4). The Breach of Agreement and release are forwarded to the central files.
 - d. The Guidance Counselor will place the inmate's name on a move sheet to effect a transfer out of the vocational school.

- e. The vocational instructor will advise security if the resident is not retained in vocational school prior to the move sheet change.
- 2. An inmate may be released involuntarily from vocational school, following the same procedure as a release except for the inmate's signature if:
 - a. The inmate has three (3) school related disciplinary reports within a thirty-day (30) period.
 - b. The resident has been assigned to segregation for twenty days (20) within a thirty-day (30) period.
 - c. The inmate demonstrates by his behavior that he is unable or unwilling to follow the training agreement or whose presence in the Vocational School poses a security or control problem. This determination will be made by Vocational and Correctional Administrative Personnel.
 - d. A completion of the vocational program after receiving a certificate or diploma.
- 3. Any inmate being released voluntarily or involuntarily from Vocational School prior to completion of the vocational program may be considered for returning to school after ninety (90) days.
 - a. Inmates moving (transfer) from one vocational program to another, will not receive a Breach of Agreement and will not have ninety (90) days to wait to be considered for the program.
 - b. Those inmates missing 20 consecutive days because of a hospitalization or a court appearance over which they had little control, will not receive a breach of Agreement and will not have to wait ninety (90) days to be considered for the program.

- c. Inmates assigned to segregation for twenty (20) days during their first ninety (90) days for non school related disciplinary reports may be released, but not breached.
- 4. Any resident desiring to be released from one vocational program and be transferred to another must:
 - a. Complete the release/transfer form (Attachment 3) after making a request through his vocational teacher.
 - b. Secure written approval by the vocational teachers involved and Vocational Guidance Counselor/Principal on the release/transfer form prior to the transfer.
- 5. Procedure for integration of Academic and Vocational Education:
 - a. Vocational students who participate in Academic School are expected to attend a minimum of sixty (60) days (unless they receive their GED) and if involved in attendance or disciplinary problems in Academic School may be released from both programs upon approval of Academic and Vocational Principal/Counselor.
 - b. Vocational students will continue, enter, or exit under the following guidelines:
 - (1) All movements between Academic and Vocational School attendance AM/PM will be controlled by the institutional move sheet.
 - (2) All requests for entrance and exit from Academic School will be routed between Vocational Counselor/Principal and Academic School Counselor/Principal. (attachments)

ACTION: All affected Kentucky State Reformatory employees and inmates will comply with this procedure upon its effective date.

(s) Al C. Parke
Al C. Parke, Warden
Kentucky State Reformatory

ATTACHMENT 1—Vocational School Application Form
ATTACHMENT 2—Vocational Trainee Agreement
ATTACHMENT 3—Vocational Education Center—Release
ATTACHMENT 4—Breach of Agreement
ATTACHMENT 5—Academic-Vocational Entrance or Exit Request

Corrections Cabinet

Kentucky State Reformatory

PROCEDURES MEMORANDUM

NUMBER: KSR 20-00-03 — Rev. 1

DATE ISSUED: July 3, 1985

EFFECTIVE DATE: July 3, 1985

SUBJECT

ACADEMIC SCHOOL PROGRAM

STATEMENT OF POLICY AND PURPOSE

It is the policy of the Kentucky State Reformatory to make available to all inmates a comprehensive education program, extending through the Associate Degree level, which meets the needs of the inmate population. Counseling, testing, individualized instruction, retesting, and programming are designed to ensure placement in that phase of the educational program most suitable to the needs and abilities of the individual inmate. The academic program meets the criteria established by the Kentucky Department of Education for Adult Education programs in Kentucky. The following procedure governs the operation of the Academic School Program.

REFERENCE

American Correctional Association Standards for Adult Correctional Institutions, 1981, Section 2-4422, 2-4423, 2-4426, 2-4434, 2-4435, 2-4440, 2-4441
Corrections Policies and Procedures Chapter 20.4 and 20.7

PROCEDURE

A. Eligibility

1. Any inmate is eligible for academic school services who wishes to improve his reading, mathematic, or language skills.
2. If space or resources become limited, first priority for school enrollment shall be:
 - a. Anyone who has not obtained a high school diploma of G.E.D. and is able to enter school on a full or part time basis.
 - b. A waiting list will be used when any learning center becomes crowded.

B. Procedures for Entering School

1. Any inmate interested in attending Academic School will be referred to the School Counselor for an interview. Vocational students, working through the Vocational Principal and Academic Principal may enter Academic School on a one-half day basis.
2. Students complete application for school admittance with the School Counselor.
3. Once assigned to the Academic School, the student takes the full TABE test, is orientated and signs the Statement of Agreement (Attachment 2). These requirements will be coordinated through the School Counselor.
4. After registering for school, students have the opportunity to meet with the counselor for two hours of review, before testing.
5. The Counselor places the student in proper learning center, notifies the center's coordinating teacher, and submits the student's data and TABE tests and scores.

6. The Counselor places all enrollment data, including test scores, on the student's personal file card in the school office.

C. Schedule of Services

1. Students are assigned to either the morning (8:15-11:20 AM), or afternoon (12:25-3:30 PM) session, Monday through Friday.

D. Responsibilities of Student

1. Students are expected to remain in the program for a minimum of 60 days (including one week for testing, orientation and programming.)
 - a. Exceptions may be made for highly unusual situations, e.g., for a man ready to take the G.E.D. test or someone with at least one month to parole hearing, if he did not have the opportunity to enroll earlier.
2. Students will sign a Statement of Agreement, stating the student's willingness to:
 - a. Consistently work to the best of his ability;
 - b. Be punctual, attend all classes, and obtain pass permission for all approved outside school movement during assigned period.
 - c. Cooperate fully with teachers and fellow students in maintaining a pleasant, quiet, study-orientated atmosphere.

E. Classroom Learning Processes

1. Following initial testing, students are assigned to one of three learning centers.
 - a. *Reading Center—0/5th Grade Achievement Level*

- (1) The focus is on basic reading-vocabulary, phonics skills, with lesser emphasis on mathematics.
 - (2) Fifth Grade Achievement Certificate is issued at completion.
- b. *Learning Center — 5th-8th Grade Achievement Level*
- (1) Learning broadens into reading, mathematics, and language with minor emphasis (through reading) on social and natural science information. Emphasis continues on reading development and/or weakest area(s). A specific program is followed, with determined-internal segment testing of what is being learned, before the student moves to a new segment.
 - (2) At the completion of this level, the student receives an Eighth Grade Equivalency Certificate.
- c. *G.E.D. Center — 8th-12th Grade Achievement Level*
- (1) Student continues, with learning shifting from individually-diagnosed weaknesses to generalized reading and videotaped study in preparation for the G.E.D. test.
 - (2) The general library, speakers, movies, and interest activities are used to keep the students motivated.
 - (3) G.E.D. tests are given by a representative from the State Division of Adult Education approximately every six weeks.

2. Students under 21 years of age are eligible for Title I supplemental aide in moderate to severe areas of deficiency (33% of school time).
3. In addition to the rules agreed to upon entry, the student is expected to work regularly and quietly on study schedule or module testing, except when working with teachers in conference. If waiting a turn to take a module test, he should work on another subject.
4. Upon the student's placement in a learning center, the center's teacher greets and introduces him to special programs, if appropriate (e.g., Title I and IRIS), schedules student into classes, and gives specific orientation for that level.

F. *Absence and Pass Procedures*

1. Valid reasons for being absent without a pass are:
 - a. Outside court
 - b. Furlough
 - c. Assignment to segregation
 - d. Hospitalization
 - e. Medical knock-off (student must show document to teacher)
 - f. Day of Parole Board Meeting
 - g. Funeral (student must show document to teacher)
 - h. I.D. — 8:00 - 11:00 AM
 Monday: Dorms 2, 6, 8, Firehouse
 Tuesday: Dorms 1, 3, 4, 10
 Wednesday: Dorms 5, 7, 9
 - j. Whenever possible, student should notify his teacher of these absences ahead of time.

2. Passes are mandatory for all absences from class. The supervising teacher (or substitute) will write and sign all passes, after verification, and will maintain a daily "in/out log" for each 20 day period. The supervising teacher will follow up daily on all passes returned, signed, etc.
 - a. Unauthorized absences are subject to disciplinary action (see section F.7.)
3. Passes to the following common locations will be governed as follows:
 - a. Must go on non-school time only
 - (1) Legal Mail, Mailroom—11:30 AM to 12 noon and 3:00 PM to 3:45 PM
 - (2) Property Room—10:30 AM to 11:30 AM for mailing pkgs.
 - (3) Legal Library
 - (4) General Library
 - (5) Clothing house, laundry, canteen, barber, other personal business
 - (6) Transfer window — 7:30 AM - 11:00 AM Thursday only
 - b. On *Call Out* or memo or *Emergency* only by school pass
 - (1) Psychologist or Psychiatrist
 - (2) Captains Office
 - (3) Adjustment Committee
 - (4) Hospital or pill window
 - (5) Visit (must be verified by Counselor, Principal or Teacher)
 - (6) Scheduled religious services
 - c. *Call Out* only. Teacher checks to see if student may come after school hours by school pass.

- (1) Dorm living unit
- (2) Caseworker or Chaplain
- (3) Live Management Teacher
- (4) Vocational School Principal
- d. *Sick Call*—MTWF 6:15 AM - 6:45 AM
 - (1) Treatment Room, Hospital, Xray by appointment only through sick call
 - (2) Optometrist by appointment only through sick call
 - (3) Dentist by appointment only through sick call
4. Teachers will verify *all* call outs, and students will return *all* passes signed by staff person at site of destination.
5. Teachers will write passes as sparingly as possible and will try to work out appointments for non-school time, when possible.
6. Only the School Counselor or Principal may approve any exceptions to the preceding regulations and any excuses to knock-off from school due to family emergencies or student illnesses which occur or worsen after regular sick call.
7. If a student does not report to class, does not have a valid excuse, or walks out, the *teacher* will:
 - a. Call the dorm to try to ascertain the reason for failure to report; if not located, call the Captains Office to have him paged over the loud speaker.
 - b. If the absence is other than the reasons cited in F.1. above, the supervising teacher will complete (type) and disciplinary report, charging the inmate with Category II, Item 3, Unexcused Absence from Assignment.

- (1) The (typed) disciplinary report is taken to either the Counselor or Principal for investigation.
 - (2) If no satisfactory excuse is found or verified, the disciplinary report and investigation (typed) will be taken to the Captain's Office by 4:00 PM the same day.
 - (3) A disciplinary report will be completed by the teacher each day that a student does not have an appropriate excuse or walks out.
 - (4) The Counselor or Principal will furnish the teacher a copy of the disciplinary report and investigation to be filed in the student's folder.
 - (5) The disciplinary report will be on file in the Counselor's Office.
 - (6) Both the disciplinary report and investigation must be typed.
7. When valid excuses are excessive, an attempt must be made to move the student to the other session (AM or PM) which will allow him to complete a full half day session. The teacher will complete a Schedule Change/Promotion form (Attachment 3).

G. *Student Pay*

1. Only move sheet assigned students will receive pay when placed into the school program.
2. Students will be paid \$.40 per day for one-half day attendance.
3. Inmates may participate in half-day school programs, and also be assigned to a job for the remaining half-day. In this case, the inmate will be paid half the normal rate of pay for all jobs with the exception of school for which he will re-

ceive full student pay for the level which he has attained.

4. Academic School students may have their wage rate increased to \$.50 per day, following the successful completion of two (2) months in school. At the successful completion of six (6) months, the student may be raised to \$.60 per day. Additional one-step raises may be given at the completion of eight (8) months and twelve (12) months study. Raises are not automatic, and the respective teacher will strongly consider each individual inmate's effort, performance, and attendance.
5. Students do not receive pay for holidays, fog days, teacher's meeting days, and other days classes are cancelled by the administration.
6. Student will receive pay for the following absences:
 - a. Hospitalization
 - b. Day of Parole Board appearance
 - c. Day of relative funeral visit.
7. No pay raise is automatic. Raises must be individually approved by the Comptroller.

H. *Academic School Testing Procedure*

1. *TABE Testing*

- a. After students are scheduled and orientated at enrollment time, the School Counselor will administer Locater, TABE E. M. and D. series tests.
- b. The Counselor will record scores in the school files and on new student data sheet.
- c. The Counselor forwards completed test sheets to the appropriate level (0-4.9 = Level I; 5.0-7.9 = Level II; 8.0-up = Level III).

- (1) All subscores, except the spelling component, must be at least the required average.
- (2) All work beyond standardized scoring is done by levels.
- (3) Teachers will forward all scores to the Counselor and will coordinate with the Counselor in promoting to the next level, when appropriate.
- d. Students who require special education or handicapped services are listed on referral forms which are forwarded to the Educational Programs Coordinator (Frankfort).

2. Pre-G.E.D. Testing

- a. G.E.D. teachers are responsible for administering the tests.
- b. Standardized testing procedures will be used, including:
 - (1) Quiet and appropriate physical/area equipment for test setting.
 - (2) Staff members administer and score tests. (Aides may help.)
 - (3) Test timing must be observed.
 - (4) Score sheets are sent promptly to the Counselor's office.
- c. All test scores will be referred to the Counselor who will forward them to the student's central folder.
3. If a level has only one to three students to retest during a given week, the teacher may have the Counselor test these students, if arranged beforehand. Also, the Counselor may give make-up seg-

ments or full tests for students missing a regular scheduled test, by prearrangement.

I *Reclassification from School*

1. The process for leaving school (move sheet), other than administrative action or transfer/departure from the institution, is as follows:
 - a. If a student wishes to or needs reclassification from school, he should see his teacher, who will in turn refer the student to the School Counselor. If the student's wish/need is valid and the teacher, counselor, and student are in agreement, the student will be released by move sheet.
 - (1) Transfer records/reasons will be retained in the student's file by the School Counselor.
 - (2) A copy of the Academic School Student Release form will be retained by the School Counselor and the original will be forwarded to Central File by the Counselor (see Attachment 4).
 - b. If the teacher feels, after repeated efforts with a student, that it is best to reclassify that student from school, the same process as above will be observed.
 - c. Students who receive three (3) consecutive school disciplinary reports within one (1) thirty day period shall be submitted for reclassification from school (same procedure as above).
2. Students being reclassified from school for any reason may be reconsidered for return to school after 90 days out of school.

J. *Night School Program*

1. A Night School program is offered for inmates to prepare them to take the G.E.D. test.

2. This program is offered for those students not able to attend the day program because of work assignments or other valid reasons.
3. The program will operate two (2) nights per week in the evening.
4. Students are to remain in the Academic School during the entire period of time.
5. The Academic School Principal will provide the Captain's Office with a current list of inmates enrolled in the Night School program (out count).
6. Students are required to attend each class session unless they have a documented medical problem.
7. In the event more students apply for the Night School program than can be enrolled, a waiting list will be kept for those interested in the program.
8. All students will be expected to study and show academic progress.
9. Books, paper, pencils, folders, and equipment are to be left at the school at all times.
10. Attendance at Night School is a job assignment and will be treated accordingly by the institution.
11. Smoking in the classroom is prohibited. Smoking while on break in the corridors or restroom will be permitted.
12. The classroom is a place to study and learn. Noise should be kept to a minimum. Students must not disrupt other students with loud talking, etc.
13. A sign in and out log will be required for students leaving the classroom for *any reason* except scheduled breaks.
14. Students are not to write in books, on desks, on walls, or deface any school property.

15. All projectors and tape players are to be checked out by the teacher. The teacher will require the student to leave his ID with him/her while he is using the equipment. Under no conditions will the inmate be permitted to take equipment from the classroom.
16. An officer will remain in the school building while Night School is in session.

ACTION: The Academic School Principal is responsible for administering the Academic School Program. All staff and inmates will abide by these procedures when involved with the Academic School Program.

(s) John D. Rees
John D. Rees, Warden
Kentucky State Reformatory

Corrections Cabinet

Kentucky State Reformatory

PROCEDURES MEMORANDUM

NUMBER: KSR 21-00-42 - Rev. 6

DATE ISSUED: May 26, 1987

EFFECTIVE DATE: May 19, 1987

SUBJECT:

INMATE LIBRARY SERVICES

STATEMENT OF POLICY AND PURPOSE

The Kentucky State Reformatory provides inmates constructive programs, including comprehensive library services. The purpose of this Procedures Memorandum is to establish regulations designed to ensure the effective and efficient operation of the Library and its use by inmates and staff.

It is also the policy of the Kentucky State Reformatory to sustain and support the personnel management guidelines affecting non-Corrections Cabinet and employees who work within its operation. The Department of Libraries and Archives administers the personnel affairs of the institutional library under the supervision of the Branch Manager for Special Services. The Kentucky State Reformatory will provide adequate facilities and support personnel to ensure that a comprehensive program may be made available to all inmates who can benefit from and have an interest in such programs.

REFERENCE

American Correctional Association Standards for Adult Correctional Institutions, 1981, Sections 2-4442, 2-4446, 2-4447, 2-4448, 2-4449, 2-4450

PROCEDURE

A. Services

1. The Kentucky State Reformatory Inmate Library contains a full array of reference, reading and audio visual materials for educational and recreational purposes relevant to the needs of the inmate population, including:
 - a. Magazines
 - b. Newspapers
 - c. Reference materials
 - d. Telephone books
 - e. Typewriters
 - f. Films for groups, clubs and the Academic School.
 - g. Inter-Library Loans
 - h. Library collection of approximately 12,000 volumes
2. All reformatory staff may use the inmate library services for reference and leisure reading with circulation privileges and rules applicable to those which are adhered to by the inmates.

B. Hours of Operation

1. The Library is open Monday, Wednesday, Friday, and Saturday from approximately 9:00 AM when the count clears until 3:20 PM. On Tuesday and Thursday, the Library is open from 10:30 AM until 5:20 PM. The Library is closed each day during lunchtime from 11:20 AM until the count clears at approximately 1:20 PM. The library will be open on Sundays and holidays for two hours, from 9:00 AM until 11:00 AM, on the respective days.

2. Library hours may be temporarily changed at the Warden's direction for Security life, health or safety considerations.
3. A book drop is available at the library for the use of returned books any time the Library is closed.
4. A book drop is also available in each dormitory for the return of books.

C. *Dress Code*

1. All persons using the Library will be dressed in a respectable manner; shoes or sandals will be worn, shirts will be buttoned. Shorts in the summer months are acceptable.

D. *Entering the Library*

1. All residents are required to have a valid I.D. Card in their possession to use the Library.
2. No food, drink, or smoking will be allowed in the Library.

E. *Magazines and Newspapers*

1. All residents who wish to borrow a magazine or newspaper must sign a slip of paper and put his number on it, then show his I.D. card for verification to the clerk.
2. Upon return of the magazine or newspaper by the resident, the clerk will discard the slip.

F. *Books*

1. Each inmate may check out two (2) books at a time. However, it may be necessary from time to time to limit certain "High Interest" subjects or authors to one (1) title per inmate. The decision as to which items will be included in this "High Interest" area rests with the Librarian.

2. To check out a book an inmate must:

- a. Present his Kentucky State Reformatory I.D. Card.
- b. Sign the library card with the Library Agreement on it. (Library Agreement is attached to this Procedures Memorandum)
- c. Sign the book slip with last name, institutional number, and dorm number.

3. Books may be checked out for seven (7) days and may be renewed, unless the book is on reserve.

4. If a resident fails to return or renew a book so that he is one (1) working day late, his name will be placed on the overdue list and a notice will be sent to the individual.

- a. He will no longer be eligible for any library services, including periodicals or books.
- b. All books must be cleared from his library record before service may be resumed.

5. If a resident fails to return a book after seven (7) days past the due date, arrangements will be made to replace the book.

- a. Any book not returned may be considered stolen and the resident who checked it out is subject to a category III, item 15 write-up. Restitution may be the result in court call.
- b. Replacement fees for books will be as follows:
 - (1) Paperbacks and hardbacks will be charged at face value.
 - (2) If the face value cannot be determined by the Librarian, a charge of \$5.00 for paperbacks and \$15.00 for hardbacks will be levied.

6. The Kentucky State Reformatory Inmate Library subscribes to the national Inter-Library Loan Code, 1980, as adopted by the American Library Association. Any resident or staff member with a valid library card may take advantage of this privilege in accordance with the rules and regulations of the Inter-Library Code.
7. Any book which the KSR Inmate Library owns may be requested and placed on reserve by any resident or staff member. If the book is not owned by the Inmate Library, every effort will be made to borrow the book through Inter-Library Loan.

G. *Clearance Before Leaving the Reformatory*

1. All residents must have Library clearance prior to being released on parole, parole furlough, camp transfer, expiration of sentence or transfer to any other institution to assure that books are not still checked out to the resident or that the replacement fees have been paid.
2. The clearance currently used by the institution will be used and must be signed by the Librarian or a staff representative.

H. *Kentucky State Reformatory Inmate Library Staff*

1. Librarian

- a. Minimum Education: Masters Degree in Library Education or Library Science; or
- b. Valid Kentucky Department for Libraries and Archives Certificate certifying qualifications as a Librarian.

2. Inmate Personnel Requirements

- a. The Inmate Library selects, trains, and utilizes inmates as Library assistants, who are trained by the Librarian.

- b. Selection of library assistants will be made by the Librarian. Selected inmates are used as circulation clerks and acquisition and technical processing clerks.
- c. Qualifications
 - (1) High school graduate or successful completion of G.E.D.;
 - (2) Minimal typing skills;
 - (3) Residents with special skills will be considered.

I. *Staffing Patterns and Programs*

1. Annual review of library staffing patterns and programs shall be conducted by the Assistant Warden for Programs/Support, Academic School Principal, Librarian, and Contract Librarian. The review shall cover the following areas;
 - a. Evaluate inmate access to library staff;
 - b. Evaluate staff available during peak hours;
 - c. Compare library procedures and staffing patterns to the ACA Standards;
 - d. Compare the operation of the library programs to stated performance goals and objectives;
 - e. Submit budget to Warden and Comptroller for review.

ACTION: All inmates and staff of the Kentucky State Reformatory will abide by the guidelines of this procedure upon its effective date.

(s) Al C. Parke
Al C. Parke, Warden
Kentucky State Reformatory

ATTACHMENT—Library Agreement

Corrections Cabinet
Kentucky State Reformatory
PROCEDURES MEMORANDUM

NUMBER: KSR 22-00-03
 DATE ISSUED: May 26, 1987
 EFFECTIVE DATE: May 19, 1987
 SUBJECT:

INMATE ORGANIZATIONS

STATEMENT OF POLICY AND PURPOSE

The Kentucky State Reformatory recognizes the positive benefits of health social interaction that can be derived from membership and work in groups, clubs, and organizations.

In order to promote positive social interaction by the residents in pursuit of their interests and in order to promote programs and stimulate a wide range of interests and activities that help inmates channel energies into legal, pro-social pastimes helpful to social reintegration, the Kentucky State Reformatory fosters and approves the development of inmate groups and organizations. The following procedures will govern the operation of all inmate groups and organizations.

REFERENCE:

American Correctional Association Standards for Adult Correctional Institutions, 1981, Sections 2-4022, 2-4052, 2-4456, 2-4459, 2-4460

PROCEDURE

A. Approval for Inmate Organizations

1. All Groups, clubs or organizations must have administrative approval to legitimately operate with-

in the general population. To formulate a new club or organization a proposal, containing goals and objectives, must be sent to the Club Co-ordinator who will review the proposal and forward to the Deputy Warden for Programs with recommendations. The Deputy Warden for programs will make necessary adjustments and forward to the Warden with recommendations. The final approval will be from the Warden with acceptance or denial.

2. Inmate Organizations may be terminated by the administration for:
 - a. Safety, Security and order of the institution
 - b. Lack of interest
 - c. Illegal activities and/or
 - d. Demand for other organizations which may surpass a current operating organization.
3. The Kentucky State Reformatory currently recognizes the following inmate clubs and/or self help organizations.
 - a. Alcoholics Anonymous (self help organization)
 - b. Action Club
 - c. Audio Visual Club
 - d. KSR JayCees
 - e. National Association for Advancement of Colored People
 - f. Seventh Step Inc.
 - g. Spade Club
 - h. Alternative Action for Non Violent Offenders (AANVO)
 - i. Friends of the Library
4. Each organization will have a written statement of purpose and operating procedure (constitution, by-

laws, charter, etc.). Any changes in the organizations charter and/or by-laws require prior approval by the Club Coordinator

5. Meeting space will be provided for approved inmate organizations upon equal basis according to the availability and capacity of the rooms to be utilized.

B. *Rules and Regulations*

1. All organizations shall abide by their constitution and by-laws at all times.
2. All organizations must submit a monthly report to the Club Coordinator by the 25th of every month. Included in this report will be proposed activities for the following month, membership roster, list of executive officers and an account of supplies/inventory.
3. All proposed activities must be approved by the Staff Advisor, Club Coordinator and Deputy Warden for Programs. Outside guests must be approved by the Staff Advisor, Club Coordinator, Deputy Warden for Programs and Deputy Warden for Security at least five (5) working days prior to the function. Only one list per organization will be utilized for approval of outside guests for any activity.
4. Each organization will adhere to the fire safety code and rules/regulations of the meeting space provided, including capacity rate, smoking rules, cleanliness, etc.
5. When institutional regulations are violated within a particular organization area the organization may lose access to its space for a designated period, per approval of the Club Coordinator and Deputy Warden/Programs.

6. All organizations will be required to have two (2) service projects per year.
7. Money making projects will be restricted to two per year for each organization. This excludes picture taking while on visits which will be on a rotating schedule.
8. All outcounts must be submitted within the proper time frames as further stated in this procedure. Members consistently failing to attend meetings to which they were outcounted with no legitimate excuse will result in possible suspension or restricted activities upon investigation. A legitimate excuse includes a Medical knock-off or approval from the Staff Advisor.
9. The number of memberships per organization, excluding Alcoholics Anonymous which is self help, will be limited to a minimum of 20 and a maximum of 75 inmates.
10. Each organization will submit an annual report to the Staff Advisor by January 15, of each year. Annual reports will include an up to date copy of by-laws, complete membership list (noting organization officers) and a completed inventory of all state issued or club owner property.
11. Any organization whose members engage in illegal activities may have any or all of its activities suspended.
12. Outside correspondence or other communication from any organization or member of an organization acting as a representative for the entire group will be approved by the staff advisor and signed by both the staff advisor and the correspondent. Correspondence should suit the need of the organiza-

tion as well as in the best interest of the Kentucky State Reformatory.

13. No inmate may be on the Executive Board or Chair a committee for two organizations at the same time. Alcoholics Anonymous is an exception to this rule because it is a self help organization.
14. Any inmate holding an office or chairing a committee of an organization who is convicted of an incident report, Cat. 4 or above may be removed from office or resign as chairperson. The administration will consider whether the incident report was related to the inmates involvement in an organization and/or if criminal charges have been filed. The inmate will still be permitted to remain a member of the organization.

Failure to abide by the above mentioned rules and regulations may result in the organization being placed in probation for an indefinite period of time, forced to disband, or have activities restricted either partially or totally. The Warden will impose such restrictions according to their severity while also reviewing the constitution and by-laws at the organization for continuance at this institution. Any exceptions to these rules and regulations must be approved by the Warden or designee.

C. *Staff Supervision of Inmate Organizations*

1. The overall responsibility for inmate organizations rests with the Club Coordinator. However, each organization must have one Staff Advisor to work directly with the group. If an advisor cannot be recruited, an advisor will be appointed.
 - a. The Club Coordinator will meet regularly with Staff Advisor(s) to discuss matters of importance.

- b. The Club Coordinator will meet with the organization presidents on a monthly basis.
 - c. The Club Coordinator will meet with both Staff Advisors and individual organizations presidents as needed.
 - d. The Club Coordinator reports directly to the Deputy Warden for Programs.
 - e. The Club Coordinator must approve and sign all outcounts and project proposals. In his/her absence, the Assistant Warden for Programs will approve.
 - f. The Club Coordinator coordinates inmate organization activities with other departments.
 - g. The Club Coordinator shall maintain a file on each organization, containing monthly reports, monthly rosters, attendance records, and project information as well as any correspondence or memos pertaining to the individual organization.
 - h. The Club Coordinator will be responsible for recruitment/selection and training of the Staff Advisors as needed.
 - i. Responsible for approving the organizations procedures and by and by-laws and any request for changes.
 - j. Responsible for evaluating the inmate organizations by attending at least one meeting per week.
 - k. Ensuring a monthly report is submitted to the Deputy Warden for Programs.
2. Supervisory responsibility for each inmate organization rests with the appointed Staff Advisor. Staff advisors will serve for a twelve (12) month period,

unless otherwise stated, reappointed, dismissed or request to remain in that position.

- a. Each Staff Advisor is responsible for monitoring the overall functioning of the organization to assure compliance with its own by-laws, institutional policies and rules and regulations.
- b. The Staff Advisor will meet regularly with the inmate organization or its representatives to determine the needs of the organization.
- c. Staff Advisors will be required to attend the weekly general membership meeting (usually held Monday - Friday) in the evenings. If the Staff Advisor is unable to attend, the Club Coordinator will be notified as soon as possible in order to provide a replacement.
- d. The Staff Advisor will act as a liason between the organization and the Deputy Warden for Programs through regular contact with the Club Coordinator.
- e. The Staff Advisor must approve all outcounts and special projects by a signature on appropriate documents, if concurrence is in order. Likewise, the Staff Advisor will disapprove projects not in the best interest of the organization and/or institution and forward such to the Club Coordinator.
- f. Ensure the outcounts are submitted to the Club Coordinator in the necessary time frame, including approval for outside guests in at least five (5) working days in advance.
- g. The Staff Advisor will co-ordinate and assist in contacts with outside individuals, organizations and businesses to facilitate development of the organizations program.

- h. The Staff Advisor will be responsible for bringing purchase orders that have been properly signed and approved by the respective club officers to the Business Office. After approval of the purchase order by the Business Office, a check will be prepared for that transaction, and given to the advisor. The advisor will be responsible for seeing that the ordered goods are properly received, and that an invoice signed by him/her and appropriate members of the club are forwarded to the Business Office for filing.
- i. Ensure that a monthly report is submitted to the Club Coordinator explaining the activities of the organization, attendance of the members and specific problems or concerns with recommendations.
- j. Staff Advisors will call the roll for attended outcount meetings, checking ID's with the outcount and file disciplinary incident reports on men who fail to attend a scheduled meeting.
- k. Receive and inspect all correspondence (including packages) addressed to their perspective organization before forwarding to an organizational member.
- l. Staff advisors will be responsible for signature approval of all outside correspondence or communication before leaving the institution from any organization or member acting for the entire group.

D. *Meetings/Use of Facilities*

1. In order to conduct the normal business of the Inmate Organization, it is important that meetings be held at reasonable times, when inmates will be free to attend such meetings.

- a. Regular meetings of the general membership, executive boards and program committees will be scheduled, subject to administrative approval.
 - b. An outcount will contain the name, number and present housing assignment of each inmate to be in attendance and the date, location and reason for the meeting. The club secretary will be responsible for monitoring daily move sheets to make the necessary adjustments in the active outcounts. If changes are necessary, the club secretary will notify the 4-12 shift Captain prior to the meeting for corrections. Failure to make the necessary changes will result in cancellation of the club meeting. The 4-12 shift Captain will notify the Club Coordinator in writing of specific errors or problems arising.
 - c. New names may not be added to the outcount after its initial preparation. Exceptions to this must be approved by the Club Coordinator or Assistant Warden for Security and forwarded to the 4-12 shift Captain.
2. Each organization may have one (1) evening general membership meeting per week on a weekday (Monday-Friday) between 6:30 PM (or after evening count) and 8:30 PM. Saturdays and Sundays will be utilized for Executive Board meetings, sub-committee meetings or necessary business. Space will be provided to all organizations on an equal basis. Any exceptions to the above mentioned must be approved by the Warden or designee.
 3. Each organization will be given a locked cabinet to store all supplies/equipment. These cabinets will be stored in a central location to ensure accessibility. An up to date inventory will be maintained on all

state issued and club owned property. Any excess of either will be discarded or mailed out of the institution at the organization's expense.

4. Each organization will be restricted to five (5) sub-committees, unless otherwise approved by the Club Coordinator, Deputy Warden for Programs and Warden or designee.
5. Responsibility for cleanliness and order of the furniture within the space provided will reside with each organization upon completion of the meeting and/or function.

E. *Financial Accounts*

1. In order for clubs to transact financial business, the institutional Business Office under the supervision of the Comptroller will maintain an account known as the "Club Fund." This fund will be established at the Bank of Oldham County. The total funds in said account will constitute all available club funds.
2. The Business Office will also maintain on the computer system subsidiary accounts, one for each club. Each subsidiary account will show complete data regarding deposits and disbursements. A monthly financial statement will be prepared and sent to each club at the end of the month.
3. When a club desires to purchase something, they must prepare a purchase order with the appropriate signatures by the club officials. This may constitute the entire Board of Directors as elected by the club. The purchase order will then be forwarded to the staff advisor who must also sign the purchase order if he/she approves of the proposed purchase. The approved purchase order will be forwarded to the Business Office, and will be approved/disapproved by the Comptroller and/or Business Office.

4. If the proposed purchase is approved, the Business Office will consult the computer system to insure that the respective club has sufficient funds in its subsidiary account to cover the proposed purchase. If so, the funds will be encumbered by the Business Office and an appropriate purchase order will be issued.
5. After the goods are received, the Staff Advisor/ Club Coordinator will be responsible for seeing that the invoice is signed by him/her and appropriate club representatives, and that the invoice is returned to the Business Office where it shall be stapled to the file copy of the purchase order.
6. Upon receipt of the signed invoice, the Business Office will prepare a check against the amount previously encumbered. The check shall be signed by two (2) of the following six (6) individuals: Warden, Deputy Warden/Operations, Deputy Warden for Programs, Deputy Warden for Security, Comptroller or Club Coordinator. The staff adviser will initial approval on the invoice.
7. Failure to return signed invoices to the Business Office may result in suspension by the Comptroller's Office of that Club's financial activities.
8. Normally, all clubs will be limited to five checks and five deposits per month. Exceptions to this will be done only on a case by case basis with sufficient documentation showing why it is essential for this ceiling to be exceeded. Such requests must be initiated by the club representative, advisor and submitted to the Club Coordinator, who will confer with the Deputy Warden for Programs. The Comptroller must approve/disapprove all such requests.

9. Deposits will be made directly into the club fund and credited to the respective subsidiary accounts. Clubs may continue to utilize transfer sheets every month to fund their dues and other money making projects.
10. Interpretation of these regulations regarding club financial activities rests in the Office of the Comptroller.

F. *Membership Dues*

1. All organizations except Alcoholics Anonymous may collect regular membership dues on a monthly or annual basis. The dues must be assessed for all members at the same rate. Alcoholics Anonymous can accept contributions from its members using Money Transfer Sheets.
2. The rate of dues and schedule for payment must be part of the organization's charter, constitution, or by-laws, which must be on file with the Club Coordinator.
3. At the discretion of the Club Coordinator an indigent inmate may be referred to a particular organization program by an appropriate staff member(s), i.e. Casemanager, Classification Committee, and may not be assessed dues or other fees for that program. The Club's usual process for accepting or denying membership will be followed.
4. Dues will be transacted on Money Transfer Sheets and processed through the Chief Clerk's Office once a month. Transactions must be received by the Chief Clerk by the 10th of the month.
5. Each organization must keep a record of dues paid by members. Completed Money Transfer Sheets will suffice for this documentation, although other types of records may be maintained.

6. All Money Transfer Sheets must have the signatures of the Staff Advisor and the chief executive officer of the organization.

G. *Income Producing Projects*

1. In order to increase an organization's operating budget, income producing projects are permitted through approved methods. Inmate organizations may use individual contributions of the organization's members, membership dues, transfer sheets, and/or inmate canteen coupon projects to raise funds.
2. All fund raising projects must have administrative approval. The Board of Directors will submit a project proposal to the Staff Advisor. If approved, the Staff Advisor will submit the proposal to the Club Coordinator for administrative approval, including the Warden. Any existing fund raising projects must be resubmitted for appropriate approvals.
3. Each organization will be limited to a maximum of two (2) fund raising projects per year, not including picture projects.
 - a. In Unit D, inmate signatures on Club transfer sheets will be witnessed by a casemanager.
4. Purchasing orders for fund raising projects will not exceed the amount of products pre-ordered. NO STOCKPILING WILL BE TOLERATED.
5. Items purchased through fund raising projects will not have an increased price of more than 20% of the cost received from the vendor. Non-deliverable items will be returned to the vendor.
6. There are two methods by which an inmate organization may generate capital:

a. *Transfer Sheets*

- (1) The Chief Clerk's Office will process two such transactions per month. (This includes membership dues).
- (2) The Chief Clerk's Office will process a monthly total of 125 names per organization via transfer sheets for fund raising projects (not including membership dues).
- (3) Transfer sheets will contain the resident's name, number, amount of purchase, and signature.
- (4) Transfer sheets will be completed in numerical order and prepared in duplicate.
- (5) If the inmate has insufficient funds, organizations must specify to the Chief Clerk's Office if a transfer should be honored.
- (6) Items for projects cannot be purchased until the transfer sheet clears.
- (7) Transfer sheets will be submitted to, checked, and signed by Staff Advisor.
- (8) Transfer sheets must be submitted to the Chief Clerk's Office by the 10th of the month.

b. *Coupon Sales Through the Inmate Canteen*

- (1) An organization may request a fund raising project be utilized through the Inmate Canteen. The Comptroller's Office will be advised in advance and arrangements made to print coupons through an Outside Vendor, with the cost borne by the organization.
- (2) Each organization will have its own color-coded coupons, in numerical sequence in order to guard against counterfeiting and duplication. A specific number of these cou-

pons will be sent to the Inmate Canteen and may be purchased through canteen transaction only. The inmate may then take the coupon and redeem it at a place designated by Staff Advisors.

- (3) The Inmate Canteen will determine the number sold, report this to the Chief Clerk's Office and the respective advisor. The corresponding amount of funds will then be transferred from the Inmate Canteen to the organization's account. The Inmate Canteen Manager will adjust his records accordingly to record the proper sales volume.
- (4) Distribution of the items purchased via the coupons is the responsibility of each organization.

c. Picture Projects Through the Inmate Canteen

- (1) Each organization may have a picture project in addition to other established fund raising projects through the Inmate Canteen. The picture coupon will be a standard coupon printed through the Inmate Canteen for use by all organizations.
- (2) Organizations requesting to take pictures during visitation (including night visits, lawn visits, holidays, etc.) as a fund raising project will be on a rotating basis. Approximately three (3) organizations will be assigned during a one (1) month period, alternating each month. Camera use at any other time must be approved by the institution.
- (3) An inmate may purchase a picture coupon from the Inmate Canteen and redeem it

through any of the picture projects. The price of the coupon will be set by the Comptroller's Office and will be the same for all organizations.

- (4) At the end of each month, each organization must redeem their collected coupons at the Inmate Canteen. The Inmate Canteen Manager will remit a check to the organization for the amount of the coupons less a service charge. The amount of the service charge will be set by the Comptroller's Office based on the cost of printing and handling of the coupons.
- (5) After the proper distribution site, time and other particulars have been approved, the transfer of goods can proceed.
- (6) The Staff Advisor shall monitor all processes involved in the fund raising projects to assure adherence to procedures.
- (7) Inmate organizations that elect to have a picture project must submit a request to acquire a camera (self developing) or other related equipment to the Staff Advisor. If approved, the request will be forwarded to the Club Coordinator and Deputy Warden for Programs for final approval.
- (8) Each organization will be provided a secured area in which to store their Camera. The Cameras are to be stored in a designated secure location from which the organizations may have convenient access, when authorized.

- (9) Each organization's board members are authorized to obtain their Camera for approved picture-taking projects.

d. Stipulation for Coupon Use

- (1) Coupons are valid for thirty (30) days only.
- (2) Each coupon must have the name and institutional number of the inmate on the back.
- (3) Coupons are not transferrable.
- (4) Any inmate who is in possession of another inmates coupon will be issued an incident report (Cat. 4 #10 - Obtaining Money or Goods under false pretense).

H. Outcounts

1. An organization's executive officer is responsible for preparing outcounts. There are NO STAND-ING OUTCOUNTS for general membership, committee or executive board meetings.
2. An outcount must be in memo form addressed to the Captain's Office and state date and purpose of meeting. It must include names and numbers of those who will attend the meeting, arranged in columns for each form or housing location. At the bottom of the outcount, space for approval signatures of an organization executive officer, Staff Advisor, Club Coordinator and Deputy Warden for Security will be provided. (see sample outcount).
3. Outcounts must be brought to the Mail Room during normal working hours (8:00 AM - 4:00 PM). The Club Coordinator will be responsible for obtaining the signature of the Deputy Warden for Security or Deputy Warden for Programs.

4. Outcounts for Monday-Friday meetings must be in the Mailroom at least two (2) working days in advance. Outcounts for Saturday and Sunday meetings must be in the mailroom no later than Thursday. The Club Coordinator will pick up outcounts and forward to Deputy Warden/Security or Deputy Warden/Programs for signature and return to the Mailroom or organizations' member.
5. Outcounts may be picked up from the Mail room on the day following submission. Failure to adhere to schedule noted in Item 4 above will either delay or cancel meetings.
6. Outcounts will be distributed to designated areas and appropriate dormitories by designated authorized club members after obtaining permission to enter from Dorm Officers.
7. No outcounts will be processed for administrative approval after the first (1st) of each month for any organization if the monthly report for that organization has not been submitted for the previous month.
8. The space provided for each organization on Saturday and Sunday is strictly for members and to be utilized for business/meeting purposes. Each organization will abide by the schedule for the specific area assigned to them.

I. Special Activities

1. Annual Club Banquet
 - a. Each organization is permitted one (1) annual banquet. Each organization must submit a Request for Annual Club Banquet (attachment 2). A Workers for Banquet Form (Attachment 5) will also be submitted, when the Dining Room will be used.

- (1) The guest list is limited to two (2) persons per resident and must be immediate family, wife or girlfriend. The guest must have been on the resident's visiting list thirty (30) days prior to the cut off date. All applications will be submitted 60 days prior to Banquet or Activity.
 - (2) Special request will be handled on an individual basis and approved by the Club Coordinator.
- b. At the first meeting in January each club will prepare a schedule of tentative activities for the ensuing year, including projected banquet dates. This projected program will be submitted to the Club Coordinator by January 15.
 - c. Banquet guest lists will be submitted to the assigned Classification/Treatment Officer for verification in accordance with visitation policy. The CTO will return the banquet guest application to the Club Coordinator within ten (10) working days indicating whether guest(s) requested have been approved or denied.
 - d. A request may not be approved unless the following information is submitted:
 - (1) An alphabetical list of club members, their numbers and their respective guests.
 - (2) An alphabetical list of special guest (names, positions, and relationship to the club).
 - (3) Outcount, listing names and numbers of set-up crew and clean-up crew.
 - (4) Workers for Banquet Form, when dining room is to be used.

- e. Invitations to staff will be made via general memorandum for wide distribution (not individual invitations) and request to RSVP and a date by which to respond. Staff wishing to attend must notify the Staff Advisor by that date.
 - f. The request itself shall include the following data: the name of the organization, date submitted, projected banquet date and time, number of residents and guests to attend, list of supplies to be provided by the Food Service Administrator, list of supplies to be brought to the institution and who is responsible, the cost of the banquet, and the source of funding for the banquet.
 - g. Approval will not be granted until the Business Office can confirm funds are available to cover the entire cost of the banquet. No organization will be allowed to appropriate money not currently on their account.
 - h. The request may be considered approved upon obtaining the following signatures (in this sequence): Organization Executive Officer, Organization Staff Advisor, Club Coordinator, Deputy Warden for Programs, Deputy Warden for Security, and the Warden. These signatures must be dated.
2. Service Projects
 - a. All organizations are required to have at least (2) two service projects per year. The organization must choose one (1) service project outside the Kentucky State Reformatory (such as Crusade for Children, United Way, Big Sisters/Big Brothers, Red Cross, etc.). Service projects within the Kentucky State Reformatory will be

for the enrichment of the entire general population (such as education drive, literacy program, donated recreational equipment, etc).

- (1) Service projects must be approved by the Staff Advisor, Club Coordinator, Deputy Warden/Programs and Warden.
- (2) Service projects shall not necessarily be limited to fund raising functions but may include educational drives, special seminars or programs, etc.
- (3) All proceeds from service projects generated as a fund raiser will be donated to the charity or organization of their choice as a requirement for their approval.

3. Other Activities

- a. Special projects or activities not of a routine nature must be approved prior to implementation. Such projects include, but are not limited to: new ways and means projects, sporting events, major equipment purchases, and special outside visitors.
- b. Proposals should be submitted on a written memorandum format to the Club Coordinator
 - (1) After collaboration with the Staff Advisor, further approval must be obtained from the Club Coordinator, Deputy Warden/ Programs and Warden.
 - (2) If the project is approved, copies shall be distributed to the Captain's Office and all affected areas prior to implementation.
- c. An organization requesting a food project (McDonald's, Druthers, etc.) as a fund raiser will be given equal distribution times which will be

limited and approved by the Administration. Food projects will be counted as one money making project. The following steps will be required:

- (1) Each inmate, when ordering food items must realize, that if he is voluntarily or involuntarily assigned to any area of Segregation during delivery time, he will forfeit his order. Orders will only be delivered to residents of Unit D who are assigned to Wings A, B, C, and D. This notice will also appear on the transfer sheets at the time of sign ups.
- (2) Any resident who is transferred to another institution, is out to court, or has been released on parole or expiration of sentence at the time of delivery will forfeit his order.
- (3) When delivering food items to Unit D, Wing A, B, C, and D residents, the designated organization deliveryman must have each resident sign for his own food. A copy of these signed sheets will be sent to the Club Coordinator upon completion and one copy shall remain in the club's records.
- (4) Food items not deliverable will be disposed of by the organization/staff advisor.
- d. All food projects will be inspected on a random basis by Staff.

J. Organization Office Supply Canteen Purchases

1. Organizations may purchase office supply items through the Comtroller's Office. Supply purchases will be charged at the current institutional rate.

2. Supplies may be ordered once per month by completing an organizational purchase order and an institutional purchase requisition and sending them to the Comptroller by the 30th of each month. The purchase requisition form will contain the following information:

- a. Date of order
- b. Department: Comptroller
- c. An itemized list of supplies needed
- d. Justification: Purchase for (organization) office supplies
- e. Person requesting: Chief Executive Officer of the organization signature
- f. Department Head: Advisor's signature
- g. Club Coordinator's signature
- h. Deputy Warden for Programs signature

3. The staff advisor will take the request to the Comptroller's Office, and the Comptroller will determine whether or not said club has sufficient funds in its subsidiary account. If the club has substantial funds for the proposal, a purchase order will be issued, and the club advisor will sign the order indicating that he received the goods. The club's subsidiary account will then be charged accordingly.

4. Organizations may purchase supplies through the Inmate Canteen. In order to do this, a requisition and purchase order must be turned in to the Comptroller's Office as delineated in Section E above. Upon the Comptroller's approval of the purchase order, a copy will be sent to the Inmate Canteen.

5. The Inmate Canteen will fill the order, and will charge the respective club's subsidiary account by using the computer system. The Canteen will then

secure a signature of the club representative picking up the merchandise, and shall return a copy of this purchase order along with the receipt to the Business Office for filing.

ACTION: All affected Kentucky State Reformatory staff and inmates will comply with this procedure immediately. The Club Coordinator is responsible for overall implementation.

(s) Al C. Parke
Al C. Parke, Warden
Kentucky State Reformatory

Attachments: 1—Sample of Outcount Memorandum
2—Request for Annual Club Banquet
3—Organizational Purchase Order
4—Financial Statement
5—Workers for Banquet

62a

DATE: June 30, 1986

PERSON COUNT	OUT TO HOSPITAL /COURT/ FURLOUGH	TOTAL INSTITUTIONAL COUNT # 1	INST. CAPACITY # 2	SPECIAL PURPOSE BEDS # 3	OPERATIONAL CAPACITY # 4	VACANT BEDS # 5
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MEDIUM SECURITY

KSR	1285	11	1296	1312	34	1287	-18
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RESPONDENT'S

BRIEF

OFFICE OF THE
SHERIFF

Commonwealth of Kentucky

Department of Corrections

Department of Corrections, et al
Plaintiff,

vs.
James M. Thompson, et al
Respondents.

Case No. Of Circuit Court In The
County of Jefferson
State of Kentucky

RETURN FOR RESPONDENTS

James M. Thompson II
210 West Main Street
Louisville, Kentucky 40202
Attorney for Respondents

FILED BY THE CLERK OF THE COURT IN THE COUNTY OF JEFFERSON ON 04/11/2002

QUESTIONS PRESENTED

I. Does the Hearing required overly burden prison administration and infringe upon the security function of the administration?

II. Was the Sixth Circuit correct in finding that there was sufficient limitation upon discretion to create a liberty interest in visitation?

III. Have the Courts created a exception to derivative due process for procedures not concerned with duration of confinement?

IV. Do state drafted procedures combined with the mandatory language of a Consent Decree create a liberty interest?

V. What process is due an inmate who has acquired a liberty interest in areas other than duration of confinement?

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RESPONDENT'S STATEMENT OF THE CASE

This appeal arises from post Consent Decree litigation concerning the male offenders incarcerated at the Kentucky State Reformatory at LaGrange, Kentucky (hereinafter after KSR). Counsel was appointed by the Honorable Edward Johnstone, Judge of the Federal District Court for the Western District of Kentucky, to represent the inmate class. The conditions case therein was settled by the parties in a landmark model prison settlement entered by the Court on May 4, 1980, *Kendrick v. Bland*, 541 F Supp 21 (W.D. Ky. 1981).

Subsequent to that settlement, the KSR Plaintiffs filed motions arguing that the Consent Decree and the Due Process Clause required that the Defendants hold Due Process hearings prior to termination of visits at KSR.

The Plaintiffs, below, argued that inmate Kenneth Bobbitt's mother had been barred from the Institution for bringing someone to KSR who the Defendants mistakenly believed was someone else. Inmate Bobbitt had no hearing prior to his right to visitation being revoked, nor was there a post termination hearing.

Inmate Kevin Black's visitation with his mother and girlfriend was revoked after he allegedly was in possession of contraband after the visit with them. No hearing was held prior to termination of the inmate's visitation rights, nor was there a post termination hearing.

The inmates petitioned the District Court to require the Defendants to have due process hearings concerning suspension of the inmate's visits.

The Court held:

Plaintiffs here claim that since the consent decree provides that "defendants shall continue their open

visiting policy," that defendants also must provide a hearing to review revocation of that liberty interest.

In this situation, this court finds no evidence that the Defendants provide for any type of a review of decisions to revoke or suspend visitation privileges. The language of the consent decree is mandatory in character, within the meaning of *Hewitt v. Helms*, *supra* in that it requires continuation of an open visitation policy. Therefore, the Plaintiffs possess a liberty interest in open visitation, and the defendants must provide minimal due process procedures when visitation of a prisoner is suspended or revoked. Those procedures should include, and may be patterned after, those provided in *Hewitt v. Helms*, 103 S.Ct at 874: an informal, nonadversary review in which a prisoner receives notice of and reasons for the revocation, and an opportunity to respond.

(J.A. A-18)

The Defendants appealed to the Sixth Circuit which affirmed, 833 F.2d 614 (6th Cir. 1987), (J.A. 151)

The Sixth Circuit in discussing the case found mandatory language both in the Consent Decree, and the regulations adopted thereto. The Court held in part:

"Mandatory" language can be found in the consent order and policy statements at issue here. In the consent order, it is written that "Defendants shall continue their open visitation policy" 541 F.Supp. at 37. The policy statement provides further that "An inmate is allowed three separate visits per week" (emphasis added). We recognize, however, that while this mandatory language buttresses the argument for finding a protected liberty interest, it may not be sufficient by itself, to create a protected liberty interest.

In this case, however, each of the three sets of prison policies in effect since the signing of the consent

decree placed "substantive limitations on official discretion" *Olim v. Wakinecoma*, 461 U.S. 238, 249 (1983), by enumerating "particularized standards or criteria" to constrain the discretion of state decision-makers. *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan J., concurring). According to the sets of regulations in effect at the time of the signing of the consent decree, and currently, visitors may be excluded only when "there are reasonable grounds to believe" that a visitor's presence would constitute a "clear and probable danger" to the institution's safety, security, or orderly operation. A nonexhaustive series of examples then follows, cited *supra* in this opinion. Both the "reasonable grounds to believe [a visitor constitutes] a clear and probable danger" and the examples listed that satisfy this criterion are substantive determination that form the basis for official decisions to exclude visitors. *Hewitt*, 459 U.S. at 470-71.

A set of policies also apparently in effect since 1981 states that "certain visitors who are either a threat to the security or order of the institution or nonconducive to the successful re-entry of the inmate to the community may be excluded." A similar nonexhaustive series of examples follows, Corrections Policies and Procedures No. 403.06. Thus, the consent order and policy statements indicate that prison officials are constrained by substantive limitations and do not enjoy absolute discretion when excluding visitors.

It is well settled that the presence of regulatory language that meaningfully limits the discretion of decisionmakers can create a liberty interest. Such an interest may be created even if the restrictions imposed are largely predictive and are based upon the application of standards of reasonableness. See *Board of Pardons v. Allen*, 107 S. Ct. 2415, 2418-21 & N.10 (1987); *Mayes v. Trammel*, 751 F.2d 175, 178-79 (6th Cir. 1984). We conclude that, given the reg-

ulatory and mandatory language discussed above, a liberty interest was created under the circumstances here.

We must remand this case, however, for a further determination of precisely which set of regulations covers the Plaintiff class, the Procedures Memorandum, which we find does create a liberty interest, purports to cover visits at the Kentucky State Reformatory; it is unclear from the record what set or regulations governs visits in other parts of the Kentucky system. We affirm the District Court's holding that the current lack of any kind of hearing does not violate the consent decree. We do not reach, therefore, the issue of whether a consent decree can create a liberty interest enforceable beyond a district court's traditional power to enforce its orders. *Green v. McKaskle*, 788 F.2d 1116, 1123-24 (5th Cir. 1986)

The decision of the District Court is affirmed in part, as aforesaid, and the case remanded for findings concerning the precise set of prison regulations applicable to plaintiffs and the precise nature of the limitations on official discretion contained in the applicable regulation and for further proceedings respecting the particular procedural process due the plaintiffs when visitation is denied.

(J.A. 159-161)

The matter was remanded to the District Court. The Sixth Circuit denied a request for re-hearing *en banc*, on January 6, 1988. This appeal followed. A writ of certiorari was granted June 27, 1988.

SUMMARY OF ARGUMENT

Visitation while it does not affect the duration or release from confinement can obviously have a profound effect on the *nature* of confinement. Regulations in effect at KSR at the time of the entry of the Consent Decree

allowed for open visitation (no list of visitors, see KSR P & P 16-00-01(B)(2) J.A. 108). An inmate is allowed up to 3 visitors per week of 1 and 1/2 hours in length (KSR P & P 16-00-01 (B)(3) & (5), J.A. 109-110). A visitor who violates the rules can be denied for up to six months (KSR P & P 16-00-01(K)(2), J.A. 133-134) or indefinitely for contraband. An inmate then could be denied up to 75 visits or more without a hearing or in inmate Black's case, for the entire length of his sentence. Depriving an inmate contact with his family for six months or possibly permanently can profoundly and dramatically alter the nature of his confinement.

The purpose of the Correctional Policies & Procedures and KSR Policies and Procedures is obviously to provide reasonable and meaningful staff direction. Likewise the procedures were mandated by the Consent Decree (J.A. 3). The procedures have a two fold purpose. *First*, implementation of the Consent Decree and *secondly* in compliance with ACA Standards. ACA Standard 2-4016 specifies:

2-4016 The policies and procedures for operating and maintaining the institution and its satellites are specified in a manual, which is accessible to all employees and to the public and is reviewed at least annually. (Essential) (Standards for Adult Correctional Institutions - 2nd Edition)

Other ACA Standards recognize the importance of visitation.

2-4337 Written policy and procedure grant inmates the right to receive visits, subject only to the limitations necessary to maintain institutional order and security. (Essential)

Discussion: Because strong family and community ties increase the likelihood that the inmate will suc-

ceed after release, visits to inmates should be encouraged. Provisions should be made for visitation in pleasant surroundings, with minimum surveillance to ensure privacy. Arrangements always should be made to ensure inmates confidential visits with attorneys. No restrictions should be placed on inmate visitation rights, except when the warden/superintendent, or designee can provide substantial justification for the restriction.

Although visitation does not affect duration of or release from confinement, it can have a profound effect on the substantive nature of confinement. That coupled with a clear intent both in the Consent Decree and Procedure to limit official discretion would create an expectation that visitation would continue and create a liberty interest. Nor does the requirement of a *Hewitt* type hearing seriously impede the security function of the prison. The hearing is not burdensome and will not alter the prison's ability to immediately suspend visitation for serious infractions.

Neither the Supreme Court nor the other Federal Courts have limited a creation of liberty interests to duration of situations.

ARGUMENT

The Respondent does not quarrel with the need for this Court to balance an inmate's constitutional rights with the security requirements of the institution, see *Wolfe v. McDonnell*, 418 U.S. 539 (1974).

The question is whether or not this decision in this case presents such an imposition.

DOES THE HEARING REQUIRED OVERLY BURDEN PRISON ADMINISTRATION AND INFRINGE UPON THE SECURITY FUNCTIONS OF THE INSTITUTION?

When the Respondents (the Plaintiff class below) first requested the defendant, (Petitioner herein), to set up a due process review for suspended visitation, the Plaintiffs requested a hearing procedure prior to suspension except in emergency situations (J.A. 61). The Court ordered the defendants (J.A. 148) to set up a *Hewitt v. Helms*, 459 US 460 (1983), type procedure.

The burden of a *Hewitt v. Helms* type procedure on a prison administration is minimal. A quick review of *Hewitt* will indicate that the potential burden is minimal, and the devastating effect whispered of is illusory at best. In *Hewitt* the due process requirement was that the correction officials were obligated to engage only in an informal nonadversary review of the information supporting respondents administrative confinement including whatever statement Respondent wished to submit within a reasonable time after confining him to administrative detention, *Hewitt* at 473.

The Supreme Court went on to further detail what was appropriate.

We think an informal nonadversary evidentiary review is sufficient both for the decision that an inmate represents a security threat and the decision to confine an inmate to administrative segregation pending completion of an investigation into misconduct charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. Ordinarily a written statement by the inmate will accomplish this purpose, although prison administrators may find it more useful to permit oral

presentations in cases where they believe a written statement would be ineffective. So long as this occurs, and the decisionmaker reviews the charges and then-available evidence against the prisoner, the Due Process Clause is satisfied. ⁸ *Hewitt* at 477

⁸ The proceeding must occur within a reasonable time following an inmate's transfer, taking into account the relatively insubstantial private interest at stake and the traditionally board discretion of prison officials.

Given the limited due process required by *Hewitt*, a requirement that visitation suspension require a *Hewitt* type hearings is not the correctional doomsday the petitioners would have us believe. Given the interest of the inmate in continued contact with friends and family, the burden upon the state juxtaposed against the effect on the inmate is minimal.

A post suspension hearing or pre-suspension in non-emergency cases does not seriously affect the *security* needs of the institution. Obviously the most critical situations, contraband or a specific problem at visitation (ie. a fight), can be dealt with by the correctional personnel at the scene and nothing in a *Hewitt* type procedure will inhibit a correctional officer's ability to immediately suspend visitation. A hearing within a reasonable time does not interfere with the orderly administration of the prison nor its safety or security.

**WAS THE SIXTH CIRCUIT CORRECT IN FINDING THAT
THERE WAS SUFFICIENT LIMITATION UPON
DISCRETION TO CREATE A LIBERTY INTEREST IN
• VISITATION?**

The crucial issue for the Court to determine is whether or not the interplay of the Consent Decree and the

applicable procedures contain sufficient mandatory language to establish a liberty interest.

One need look no further than *Hewitt v. Helms*, *supra*, at 472. The Court held:

But on balance we hold that the repeated use of explicitly mandatory language in connection with requiring specific substantive predicates created a protected liberty interest.

Both the District Court and the Sixth Circuit found the sufficient mandatory language existed in the Consent Decree and the applicable procedures.

The District Court held in part:

In this situation, this Court finds no evidence that defendants provide any type of a review of decisions to revoke or suspend visitation privileges. The language of the consent decree is mandatory in character, within the meaning of *Hewitt v. Helms*, *supra*, in that it requires continuation of an open visitation policy. Therefore, the Plaintiffs possess a liberty interest in open visitation, and defendants must provide minimal due process procedures when visitation of a prisoner is suspended or revoked. Those procedures should include, and may be patterned after, those as provided in *Hewitt v. Helms*, 103 S. Ct. at 874: an informal, nonadversary review in which a prisoner receives notice of and reasons for the revocation, and an opportunity to respond. (J.A. 148)

The Sixth Circuit took a slightly different tack putting more emphasis on the relevant procedure. The Sixth Circuit said in part:

"Mandatory" language can be found in the consent order and policy statements at issue here. In the consent order, it is written that "Defendants shall continue their open visitation policy." 541 F.Supp. at

37. The policy statement provides further that "An inmate is allowed three separate visits per week." (emphasis added). We recognize, however, that while this mandatory language buttresses the argument for finding a protected liberty interest, it may not be sufficient, by itself, to create a protected liberty interest.

In this case, however, each of the three sets of prison policies in effect since the signing of the consent decree placed "substantive limitations on official discretion," *Olim v. Wakinekoma*, 461 U.S. 238, 249 (1983), by enumerating "particularized standards or criteria" to constrain the discretion of state decision-makers. *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 467 (1981) (Brennan, J., concurring) (J.A. 159).

The key for the Sixth Circuit is the interplay of the Consent Decree and the Procedures. The mandatory language flows from both.

Thirdly, the Consent Decree and the procedures are rife with mandatory language. It is well settled law that use of mandatory language followed by non-exhaustive directions can give rise to a due process right. One need look no further than *Hewitt v. Helms*, supra at 472. (quoted above)

It is important to note in *Hewitt* at 472, footnote 6, the use of mixed mandatory and permissive language, such as in the case at bar.

An examination of the instant right reveals that mandatory language is found in CPP 403.03 (J.A. 26), CPP 403.04 (A) (J.A. 90), the Consent Decree, and in KSR Policy and Procedure 16-00-01 (2), (3), (4), (5), (App. A-28). The non exhaustive criteria are found at CPP 403.06 (App. A-22) and KSR 16-00-01 (K) (J.A. 132-133). A fair reading of these procedures indicates precisely the kind of language this Court found to create a liberty interest in

Hewitt. See also similar language in *Parenti v. Ponte*, 727 F2d 21 (1st Cir. 1984), *Brennan v. Cunningham*, 813 F2d 1 (1st Cir. 1987), *Stokes v. Fair*, 795 F2d 255, (1st Cir. 1986), *Mayes v. Trammel*, 751 F2d 175 (6th Cir. 1984). See also *Bills v. Henderson*, 631 F2d 1287 (6th Cir. 1980). The Court there examined procedure containing mandatory requirement and language recommending certain conduct.

The Court said:

It is equally clear that the instant case does not fall easily into either of these situations. The Guidelines in this case give prison officials wide discretion in making what is essentially a predictive decision on what would serve the best interests of the institution and the individual. On the other hand, the Guidelines, by specifically outlining the purpose of administrative segregations and recommending the general situations in which it would be appropriate, seek to set the bounds within which that discretion is to be exercised. *Bills* at 1293.

The Court should remember that the mandatory language of the Consent Decree was reached by the agreement of the parties. No fewer than fourteen (14) attorneys (J.A. 35-36) participated in the drafting of the Consent Decree and arrived at the mandatory language. The policies issued by the Petitioner, herein, were drafted by the Personnel of the Petitioner in partial compliance with the Consent Decree. The use of mandatory language in the Consent Decree and the Policies and the use of substantive predicates creates evidence of intent to limit discretion and creates a liberty interest in continued visitation.

**HAVE THE COURTS CREATED AN EXCEPTION TO
DERIVATIVE DUE PROCESS FOR PROCEDURES NOT
CONCERNED WITH DURATION OF CONFINEMENT?**

Although the Supreme Court in *Hewitt* did indicate a reluctance to extend derivative due process to an inmate's confinement in administrative segregation, they did so.

The Court held:

There are persuasive reasons why we should be loath to transpose all of the reasoning in the cases just cited to the situation where the statute and regulations govern the day-to-day administration of a prison system. The deprivations imposed in the course of the daily operations of an institution are likely to be minor when compared to the release from custody at issue in parole decisions and good-time credits. Moreover, the safe and efficient operation of a prison on a day-to-day basis had traditionally been entrusted to the expertise of prison officials, see *Meachum v. Fano*, supra, at 225, 96 S.Ct., at 2538. These facts suggest that regulations structuring the authority of prison administrators may warrant treatment for purposes of creation of entitlements to "liberty," different from statutes and regulations in other areas. Nonetheless, we conclude in the light of the Pennsylvania statutes and regulations here in question, the relevant provisions of which are set forth in full in the margin, that respondent did acquire a protected liberty interest in remaining in the general prison population. *Hewitt* at 470.

Numerous Courts have dealt with other liberty interest situations in prisons.

Courts have held that liberty interest can be created in non-confinement and non-substantive condition situations.

In *Hernandez v. Johnson*, 833 F2d 1316 (9th Cir. 1987), the Court held that the State statutes governing accurate prison records contain the type of substantive limitation on the exercise of official discretion that creates a liberty interest, *Hernandez* at 1318, citing *Baumann v. Arizona Department of Corrections*, 754 F2d 841 (9th Cir. 1985).

The Court went on to hold that the statute did not apply to Plaintiff's records.

Other Courts have found liberty interests to exist in medical treatment outside the prison, *Harris v. Jacobs*, 621 F2d 341 (9th Cir. 1980) and rehabilitation under a youthful offenders act, *Michlus v. Carlson*, 632 F2d 227 (3rd Cir. 1980). Other Courts have failed to find liberty interest but on the basis of lack of sufficient mandatory language, not on some fundamental interest basis, see *Garza v. Miller*, 688 F2d 480 (7th Cir. 1980), *cert den.* 103 S.Ct. 796 (no derivative due process right to jobs, recreation or education) and *Arberry v. Sieloff*, 586 F2d 37 (7th Cir. 1978) (no derivative due process right to educational programs).

The Petitioners would have this Court require that a derivative due process right only be recognized when a substantial liberty interest is at stake, such as length of confinement, citing *Morrissey v. Brewer*, 408 U.S. 471 (1972), *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and *Vitek v. Jones* 445 U.S. 480 (1980).

The Petitioner's reliance on *Morrissey*, *Gagnon*, and *Vitek*, is misplaced. There is a critical distinction to be made between the cases at bar and the cited cases. The distinction is set forth well in *Whitehorn v. Harrelson* 758 F2d 1416 (11th Cir. 1985).

The Court held:

In only a few limited circumstances has the Supreme Court recognized a liberty interest inherent in the Constitution itself in favor of a prisoner whose original confinement was lawful. A liberty interest inherent in the Constitution arises when a prisoner has acquired a substantial, although conditional, freedom such that "the loss of liberty entailed [by its revocation] is a serious deprivation requiring that the [prisoner] be accorded due process". *Gagnon v. Scarpelli*, 1793, 411 U.S. 778, 781, 93 S.Ct. 1756, 1759, 36

L.Ed.2d 656. Interests recognized by the Supreme Court that fall within this category include the revocation of parole, *Morrissey v. Brewer*, 1972, 408 U.S. 471, 92 S. Ct. 2593, 33 L.Ed.2d 484, and the revocation of probation, *Gagnon v. Scarpelli*, 411 U.S. at 778, 93 S.Ct. at 1756. The Court has also recognized a protected liberty interest that was not extinguished upon the prisoner's conviction and sentencing. In *Vitek v. Jones*, 1980, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed 552, the Court held that a prisoner has a liberty interest inherent in the Constitution itself entitling him to due process protections before he could be involuntarily transferred from prison to a mental hospital. The Court has consistently refused to recognize liberty interests arising from the Constitution itself in situations involving the alteration of a more conditional right to status afforded a lawfully confined prisoner, *Whitehorn* at 1420. (emphasis mine)

The Court went on to note that liberty interest can also be created by "statutes, regulation or practice", *Whitehorn* at 1422.

The case at bar does not involve any argument concerning whether or not there is a fundamental liberty interest inherent in the constitution itself, *Whitehorn* at 1420, but involves an interest created by a consent decree and state drafted policy. Any attempt to engraft a fundamental right requirement upon a due process right arising from limitations upon the discretion of state officials is a corruption of derivative due process. The right is not somehow inherent in the constitution itself, but is created by the volitional actions of state officials.

The Court in *Meachum v. Fano*, 427 U.S. 215 (1976) rejected the claims of the inmates on two grounds, first, because the fourteenth (14) amendment to the Constitution itself does not restrict transfers between prisons, *Meachum*, at 225. Secondly, because:

Here, Massachusetts law conferred no right on the prisoner to remain in the prison to which he was initially assigned, defeasible only upon proof of specific acts of misconduct. Insofar as we are advised, transfers between Massachusetts prisons are not conditioned upon the occurrence of specified events. On the contrary, transfer in a wide variety of circumstances is vested in prison officials. The predicate for invoking the protection of the Fourteenth Amendment as construed and applied in *Wolfe v. McDonnell* is totally nonexistent in this case, *Meachum* at 227.

This Court went on to note a key policy reason behind non-interference with discretion of state prison officials.

As we understand it no legal interest or right of these respondents under Massachusetts law would have been violated by their transfer whether or not their misconduct had been proved in accordance with procedures that might be required by the Due Process Clause in other circumstances. Whatever expectation the prisoner may have in remaining at a particular prison so long as he behaves himself, it is too ephemeral and insubstantial to trigger procedural due process protections as long as prison officials have discretion to transfer him for whatever reason or for no reason at all.

Holding that arrangements like this are within reach of the procedural protections of the Due Process Clause would place the Clause astride the day-to-day functioning of state prisons and involve the judiciary in issues and discretionary decisions that are not the business of federal judges. *Meachum* at 228-229.

It is obviously not the business of Federal Judges to interfere with day-to-day prison activities. To substitute their discretion for the discretion of state prison officials is hardly the purpose of the Due Process Clause. Only when officials have placed sufficient limits on their own discre-

tion does the 14th amendment Due Process Clause control.

A fair reading of *Meachum* inescapably brings us to the conclusion that if the state regulations had conditioned a transfer on a specific event a liberty interest would be created, see *Harris v. McDonnell*, 737 F2d 662 (7th Cir. 1984), at 664, citing *Meachum* at 229.

Nor does the decision of *Olim v. Wakinekona*, 461 U.S. 149 (1983), or *Montanye v. Haymes*, 427 U.S. 236 (1973) buttress the argument of the petitioner. In *Montanye* the analysis of the Court was that:

Under the New York law, the transfer of inmates is not conditional upon or limited to the occurrence of misconduct. The statute imposes no conditions on the discretionary power to transfer, and we are advised by the State that no such requirements have been promulgated. Transfers are not among the punishments which may be imposed only after a prison disciplinary hearing. NYCRR, 253.25. Whatever part an inmate's behavior may play in a decision to transfer, there is no more basis in New York Law for invoking the protections of the Due Process Clause than we found to be the case under the Massachusetts law in the *Meachum* case, *Montanye* at 243.

In *Olim* the Court found "Hawaii's prison regulations placed no substantive limitation on official discussions and this creates no liberty interest entitled to protection under the Due Process Clause, *Olim* at 249.

Petitioner's reliance on *Olim*, *Montanye* and *Meachum* is misplaced. None of these cases stand for the proposition that limitations on the discretion must be coupled with some changes in duration or nature of confinement. The key is the decision by state officials to place the limitations

on discretion which create the expectation that a certain course of conduct will continue creating a 14th amendment liberty interest.

**DO STATE DRAFTED PROCEDURES COMBINED WITH
THE MANDATORY LANGUAGE OF THE CONSENT
DECREE CAN CREATE A LIBERTY INTEREST.**

It would seem to the plaintiffs that after *Olim* and *Hewitt* that the issue of whether or not state drafted procedures standing alone can create a liberty interest has been laid to rest.

The Fourth Circuit in *Hayes v. Thompson*, 726 F2d 1015 (4th Cir. 1983) discussed the effect of *Hewitt* and *Olim*:

To the extent the *Cooper v. Riddle*¹ and *Gorham v. Hutto*² held that prison regulations alone cannot create protected interests, we find that they have been overruled by *Hewitt* and *Olim*. *Hayes* at 1016.

The same result was reached by the Circuit Court for the District of Columbia in *Lucas v. Hodges* 730 F2d 493 (1984), *vacated as moot*, 738 F2d 1392 (DC Cir. 1984), the Court said in part:

We agree with the conclusion reached by every circuit that has squarely considered the issue that a prisoner may acquire a protected liberty interest by virtue of official policy statements or regulations duly promulgated by administrators of the particular institution at which the prisoner is confined.

The issue of whether or not a prison regulation can create a liberty interest is dead and buried.

¹ 540 F2d 731 (4th Cir. 1976)

² 667 F2d 1146 (4th Cir. 1981)

Even if the CPP's and KSR P & P's were the only language before the Court, the law is clear that they would be sufficient to create a liberty interest.

However, also before the Court is the Consent Decree drafted in part by Petitioner's counsel and many others that have established by contract and Court Order the right to have open visitation. The Consent Decree language is mandatory in that failure to abide by it could invoke the powers of the District Court.

Furthermore, when the Consent Decree the CPP's and KSR P & P's are read together there is little doubt that the shall/unless test of *Greenholtz v. Inmates of Nebraska* 442, U.S. 1 (1979) is met. The *Greenholtz* test is set forth in great detail in *Baumann v. Arizona Department of Corrections*, 754 F2d 841 (9th Cir. 1985). Even though the Ninth Circuit saw it's interpretation of *Greenholtz* to be restrictive, *Baumann* at 844, the language at bar meets it. The Consent Decree provides that open visitation will continue. The applicable regulations state that certain visitation is allowed with a non-exhaustive list of criteria for denial.

The difference between shall/unless and is/may is only semantical. Moreover, if the language of the applicable regulation in *Hewitt* is reviewed, it is evident that the language is not markedly different in tone from the language used by the Petitioner's, see *Hewitt* at 471, Footnote 6.

This is not the implied contract or mutual understandings of *Jago v. Van Curen*, 454, U.S. 14, (1981) but is carefully crafted documentation. The Court should defer to the intent of the drafters, as manifested by the documents themselves: an intent to limit the discretion of the prison officials.

The Petitioner's would have us create an exception to liberty interest created in non-duration of confinement or substantive changes in confinement cases.

**WHAT PROCESS IS DUE AN INMATE WHO HAS
ACQUIRED A LIBERTY INTEREST IN AREAS OTHER
THAN DURATION OF CONFINEMENT**

In the introductory argument the Respondent's maintain the burden of a *Hewitt* procedure on the state was not great. The Petitioners have asked this Court to set up an exception to the liberty interest question for cases such as the one at bar. The Respondent believes this has already been dealt with by a balancing of interests test. The amount of due process due (no pun intended) is directly in relationship to the nature of the interest. For example, a transfer to a mental institution requires a *Vitek* type hearing which is more detailed than the *Hewitt* type hearing. A parole revocation requires a *Morrissey* type hearing which is more detailed than the *Vitek*. The hearing required by *Greenholtz* is again more detailed than the hearing required by *Hewitt*.

The right engendered by the state is the case at bar is important but is clearly not of the same nature as parole revocation. Part of the state's objection to the possibility of the other regulations giving rise to liberty interest was adequately dealt with by *United States v. State of Michigan*, 680 F.Supp. 275 (Western District of Michigan 1988). After holding that an inmate could have a liberty interest in normal food the Court held that:

I further find that Policy Directive PD-BCF-50.04 confers a liberty interest on prisoners in not being placed on food loaf unless they have engaged in the behavior identified in that policy. While the private interest at stake is great, it is not so great as to require defendants to conduct a disciplinary hearing

prior to the imposition of food loaf upon a particular prisoner, *U.S.* at 279.

The import is clear. The interest created in some circumstances can be so minimal as to require very little due process. The Court herein has found that a *Hewitt* type hearing is appropriate. This Court should defer to Judge Johnstone's remedy.

CONCLUSION

This Court should affirm the Sixth Circuit's decision. The Consent Decree coupled with the procedures of this state create a liberty interest in continued visitation. Nothing in a *Hewitt* type hearing will disrupt the essential security functions of this state, nor is it overly burdensome upon the state. The import of the decision lies only with one prison in the Western District of Kentucky and this portion of Kentucky's Correctional history should close.

Respectfully submitted,

JOSEPH S. ELDER II
710 West Main Street
Louisville, Kentucky 40202
502/587-8444
Counsel for Respondents

REPLY

BRIEF

8
No. 87-1815

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, Et Al, . . .

Petitioners,

versus

JAMES M. THOMPSON, Et Al, . . .

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR THE PETITIONERS

BARBARA WILLETT JONES*

Corrections Cabinet

Office of General Counsel

State Office Building

Room 500

Frankfort, Kentucky 40601

502/564-2024

Counsel for Petitioners

LESLIE PATTERSON VOSE

LANDRUM & SHOUSE

106 West Vine Street

P. O. Box 951

Lexington, Kentucky 40588-0951

606/255-2424

Counsel for Petitioners

**Counsel of Record*

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IN THE

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COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS,
DAVID H. BLAND, Et Al., - - - *Petitioners*,

v.

JAMES M. THOMPSON, Et Al., - - - *Respondents*.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

I. Respondents' Statement of the Case Improperly Characterizes the Conduct of State Officials as Revoking an Inmate's Visitation Rights.

The nature of this case does not involve the termination of an inmate's visiting privileges; private individuals were suspended from visiting the prison. The district court made specific findings with respect to the issue presented and stated:

The particular incidents at issue here concern the suspension of certain individuals from visiting prisons, and not the suspension of prisoners from receiving visits. (J.A. 145)

These findings were not objected to by respondents on appeal. Black and Bobbitt were still permitted to visit with other persons as provided by the procedures and could still correspond via mail and telephone with the visitors whose visitation rights were suspended.

Respondents' summary of the argument inaccurately suggests that inmate Black was denied visitation for the entire length of his sentence. The record below demonstrates a dispute of fact as to whether inmate Kevin Black's mother was suspended from visiting more than one time. The record does not reflect how long Ms. Cindy Preston was suspended from visiting Black. (J.A. 65-67 and J.A. 84)

II. Respondents Admit the Purpose of the Visiting Procedure Is to Provide Staff Guidance.

Of substantial significance in respondent's brief is their admission that "the purpose of the Correctional Policies and Procedures and KSR Policies and Procedures is obviously to provide reasonable and meaningful staff direction" (Respondents' Br. in Opp., page 5) Interestingly enough, in the district court, respondents argued that these procedures were of such a blanket nature that they constituted vague and arbitrary standards and thus were unconstitutional. (J.A. 61) Thus, initially, respondents believed visiting procedure authorizing the denial of visits were vague and arbitrary giving officials too much discretion. This position is counter to respond-

ents' argument today that the procedures themselves limit the discretion of officials to such an extent that a liberty interest is created.

Respondents' argument is remarkable in that it suggests the burden of a *Hewitt* type procedure on a prison administration is minimal. Such a statement is conclusory at best. A mere calculation of numbers already in the record demonstrates this statement is unsupported. At the time the court entered its order on June 26, 1988, the record reflected that there were approximately 1285 inmates at the Kentucky State Reformatory. (Pet. App. 62A) The corrections procedures require each institution to provide a minimum of eight hours of visitation per inmate per month. (J.A. 69) The Kentucky State Reformatory procedures permit three visits per week, per inmate, with a maximum limit of three adults per visit and unlimited children. The length of visits for each inmate ranges from 1 to 1½ hours per visit. (J.A. 108-109) No evidence in the record exists to demonstrate the number of visitors accommodated on a daily average. It is obvious visiting is a large-scale operation at the Kentucky State Reformatory as evidenced by the agreement in the consent decree requiring corrections to 1) maintain the visitation program that was in place and 2) to expand the physical facilities for the inmates at the Kentucky State Reformatory. (J.A. 26-27) Based on these facts, to require *Hewitt* procedures for every denial of a visit is an administrative burden. This due process analysis when applied to

comparable administrative procedures creates an even greater burden feared by corrections throughout the country as evidenced by the amicus brief.

III. Broad Application of the Mandatory/Channeling Language Analysis Leads to Absurd Results

Due process protection for the substitution of a nutritionally adequate but esthetically unappealing "food loaf" created by state regulations with meaningful criteria for staff use in imposing the diet is an absurd result. Respondents cite *United States v. State of Michigan*, 686 F. Supp. 270 (W.D. Mich. 1988) in support of their argument that state regulatory language regarding all levels of prison administration can create constitutionally protected rights. This case discusses the constitutional ramifications of substituting a "food loaf", which all parties agreed was calorically and nutritionally similar to the caloric and nutritional content of normal prison meals. The food loaf was provided when an inmate in segregation had participated in enumerated types of behavior. Recognizing the "food loaf" did not violate the state's consent decree, nor the Eighth Amendments' prohibition against cruel and unusual punishment, the district court nonetheless found the "mandatory language" in connection with "specific substantive predicates" created a constitutionally protected liberty interest in not being placed on food loaf. *Id.* at 277.

This case illustrates the extreme danger of reliance on semantic analysis. Even the respondents state in

their brief "the difference between shall/unless and is/may is only semantical." Unless a guideline or procedure affects the length of, release from, or inherent nature of confinement, general administrative procedures should not create constitutionally protected interests which require federal court oversight.

IV. Respondents Erroneously Argue That the Denial of Visits Has Such a Profound Effect on the Substantive Nature of Confinement to Warrant Constitutional Protection.

Respondents rely on the theory that the nature of the inmates' interest to visit with friends and family has such a substantive impact on the nature of confinement that the balancing of interest weighs heavily in favor of the inmate. However, this Court has rejected that principle in *Olim v. Wakinckona*, 461 U.S. 149 (1983). In *Olim*, the state procedures acknowledged that an out-of-state transfer was a "grievous loss" to the inmate and established mandatory pre-transfer procedures permitting confrontation, cross-examination and counsel. This Court acknowledged transferring an inmate from Hawaii to California would subject the prisoner to a loss of contact with his immediate friends and family, but found the transfer would not substantively change the very nature of confinement. Certainly, the restriction of a visitor does not rise to the level of the questions raised in *Olim, supra*.

V. The Sixth Circuit's Decision Does Not Rely on the Language of the Consent Decree to Find a Protected Liberty Interest.

In the decision below, the district court relied solely on the language of the consent decree as creating a mandatory right to visitation with a person of choice at the Kentucky State Reformatory. However, the Sixth Circuit rejected that finding. Although the Sixth Circuit did reference the language of the consent decree it did not rely on the consent decree as the basis for finding a protected liberty interest. The Sixth Circuit stated:

"Mandatory" language can be found in the consent order and policy statements at issue here. In the consent order, it is written that "Defendants *shall* continue their open visitation policy." 541 F. Supp. at 37. The policy statement provides further that "an inmate *is* allowed three separate visits per week." (emphasis added). We recognize, however, that while this mandatory language buttresses the argument for finding a protected liberty interest, it may not be sufficient, by itself, to create a protected liberty interest. (J.A. 159)

The court then examined the specific policies and concluded:

We must remand this case, however, for a further determination of precisely which set of regulations covers the plaintiff class. The procedures memorandum, which we find does create a liberty interest, purports to cover visits at the Kentucky State Reformatory; it is unclear from the record

what a set of regulations governs visits in the other parts of the Kentucky system. We affirm the District Court's holding that the current lack of any kind of hearing does not violate the consent decree. We do not reach, therefore, the issue of whether the consent decree can create a liberty interest enforceable beyond a District Court's traditional powers to enforce its orders. Cf. *Green v. McKaskle*, 788 F. 2d 1116, 1123-24 (5th Cir. 1986). (J.A. 160-161)

Thus, in the eyes of the Sixth Circuit the interplay of the consent decree was not crucial to the decision nor should it be crucial to this Court's decision. To find that such language creates a protected interest when read in conjunction with state procedures would create the administrative nightmare suggested by corrections. (See Petitioners' Brief, pages 27-31) The consent decree is replete with language where corrections has agreed to 1) maintain programs at the current level or 2) expand programs or 3) not prohibit participation in programs but for specified reasons. To rule that procedures written in conjunction with consent decree language creates liberty interest will expand the scope of consent orders beyond the traditional enforcement powers under contract law and equity. *United States v. Swift and Company*, 286 U.S. 106 (1932) and *System Federation No. 91 v. Wright*, 364 U.S. 642 (1961).

CONCLUSION

The judgment of the Court of Appeals finding that the Reformatory Procedures created a liberty interest protected by the Due Process Clause should be reversed.

Respectfully submitted,

BARBARA WILLETT JONES
Corrections Cabinet
Office of General Counsel
State Office Building
Room 500
Frankfort, Kentucky 40601
502/564-2024

Counsel for Petitioners

LESLIE PATTERSON VOSE
LANDRUM & SHOUSE
106 West Vine Street
P. O. Box 951
Lexington, Kentucky 40588-0951
606/255-2424

Counsel for Petitioners

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AMICUS CURIAE

BRIEF

6
No. 87-1815

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In The
Supreme Court of the United States

October Term, 1987

COMMONWEALTH OF KENTUCKY,
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Respondents.

ON WRIT OF CERTIORARI TO THE
SIXTH CIRCUIT COURT OF APPEALS

AMICUS BRIEF OF THE STATES OF TENNESSEE,
ALABAMA, ALASKA, ARIZONA, ARKANSAS,
CONNECTICUT, FLORIDA, IDAHO, ILLINOIS,
INDIANA, IOWA, KANSAS, LOUISIANA, MARYLAND,
MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI,
NEVADA, NEW JERSEY, NEW MEXICO, NORTH
CAROLINA, OHIO, OKLAHOMA, PENNSYLVANIA,
SOUTH CAROLINA, SOUTH DAKOTA, TEXAS,
UTAH, WASHINGTON, WISCONSIN and WYOMING
IN SUPPORT OF PETITIONER

W. J. MICHAEL CODY
Attorney General and Reporter
State of Tennessee

*MICHAEL W. CATALANO
Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
(615) 741-3499

*Counsel of Record

Honorable Don Siegelman Attorney General of Alabama	Honorable Brian McKay Attorney General of Nevada
Honorable Grace Berg Schaible Attorney General of Alaska	Honorable W. Cary Edwards Attorney General of New Jersey
Honorable Robert K. Corbin Attorney General of Arizona	Honorable Hal Stratton Attorney General of New Mexico
Honorable John Steven Clark Attorney General of Arkansas	Honorable Lacy H. Thornburg Attorney General of North Carolina
Honorable Joseph Lieberman Attorney General of Connecticut	Honorable Anthony J. Celebrezze, Jr. Attorney General of Ohio
Honorable Robert Butterworth Attorney General of Florida	Honorable Robert Henry Attorney General of Oklahoma
Honorable Jim Jones Attorney General of Idaho	Honorable LeRoy S. Zimmerman Attorney General of Pennsylvania
Honorable Neil F. Hartigan Attorney General of Illinois	Honorable Travis Medlock Attorney General of South Carolina
Honorable Linley E. Pearson Attorney General of Indiana	Honorable Robert A. Tellinghuisen Attorney General of South Dakota
Honorable Thomas J. Miller Attorney General of Iowa	Honorable Jim Mattox Attorney General of Texas
Honorable Robert T. Stephan Attorney General of Kansas	Honorable David L. Wilkinson Attorney General of Utah
Honorable William J. Guste, Jr. Attorney General of Louisiana	Honorable Kenneth O. Eikenberry Attorney General of Washington
Honorable J. Joseph Curran, Jr. Attorney General of Maryland	Honorable Don J. Hanaway Attorney General of Wisconsin
Honorable Frank J. Kelley Attorney General of Michigan	Honorable Joseph B. Meyer Attorney General of Wyoming
Honorable Hubert H. Humphrey, III Attorney General of Minnesota	
Honorable Michael C. Moore Attorney General of Mississippi	
Honorable William L. Webster Attorney General of Missouri	

QUESTION PRESENTED

Whether the use of some mandatory language in a prison policy which does not concern the duration or level of an inmate's confinement, *i.e.* visitation procedures, creates a constitutionally-protected liberty interest for the inmate in such a policy?

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SOUTH CAROLINA, SOUTH DAKOTA, TEXAS,
UTAH, WASHINGTON, WISCONSIN and WYOMING
IN SUPPORT OF PETITIONER

INTEREST OF AMICI STATES

The interest of the amici states in the outcome of this case was previously stated in their Brief in Support of the Petition for Writ of Certiorari. See Amicus Brief for the States of Tennessee, *et al.* in Support of

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, pp. 2-3. Those interests, likewise, apply to the merits of the issue presented to this Court.

Guidelines for the daily operation of this country's correctional institutions are essential in order to maintain proper security while at the same time providing guidance to correctional officers who must make on-site decisions as to every aspect of the daily lives of inmates. If the decision of the United States Court of Appeals for the Sixth Circuit is affirmed, prison management guidelines will either be amended so as to become meaningless verbiage in order for corrections officials to avoid the creation of any liberty interest for inmates in such policies, or corrections officials will be forced to provide hearings with regard to every aspect of institutional life. In addition to the petitioner's argument the amici states from their collective perspective will show this Court why the decision of the United States Court of Appeals for the Sixth Circuit should be reversed.

STATEMENT OF THE CASE

This case arises out of a consent decree entered on May 4, 1980, which addressed conditions of confinement at the Kentucky State Reformatory and Kentucky State Penitentiary, including visitation privileges.¹ *Kendrick v.*

¹ In fact the consent decree simply provided that the "defendants shall continue their open visiting policy at Kentucky

(Continued on following page)

Bland, 541 F.Supp. 21 (W.D. Ky. 1981). In particular, the facts before this Court concern two incidents which occurred at the Kentucky State Reformatory regarding the suspension of visitation by certain individuals to inmates at that institution. The first incident pertained to the mother of inmate Kenneth Bobbitt, who had been denied the right to visit him for a limited period of time because she had brought to the institution an individual by the name of Gerald Eastman, who previously had been barred from the institution for smuggling contraband. The second incident related to the mother and girlfriend of inmate Kevin Black who were barred from the institution for a limited period of time after Mr. Black was convicted of possession of contraband received immediately after a visit with his mother and girlfriend.

These inmates, on behalf of themselves and the class of inmates at the Kentucky State Reformatory, argued that the suspension of their visitors' privileges was without due process, violating the consent decree, and correspondingly, the due process clause. The relief requested by the plaintiff class to the district court was an order to require the defendants to conduct due process hearings prior to suspension of any visit, and in an emergency, a post-suspension hearing.

(Continued from previous page)

State Reformatory." Joint Appendix, p. 26. The prior visitation policies were substantially the same as the present policies. Petitioner's Brief, p. 3. Thus, any argument that the consent decree created any liberty interest is erroneous in light of the fact that the decree merely makes reference to the visitation policies which have remained substantially the same before and after the consent decree.

The district court held that the language of the consent decree established mandatory visitation protected by the due process clause and ordered the defendants to implement minimum due process procedures to include: (1) notice to the inmate, (2) reasons for the revocation or a suspension of a visitor, and (3) an opportunity for the inmate to respond. The district court did not address the question of whether any of the policies at the Kentucky State Reformatory, relative to visitation, created any protectible liberty interest, but based its decision solely on the mandatory language contained in the consent decree.

The petitioner appealed the decision of the district court to the United States Court of Appeals for the Sixth Circuit, which affirmed the district court's finding that a liberty interest existed; however, the Sixth Circuit did not address the issue of whether the consent decree created a protected liberty interest, but rather determined that the visitation procedures of the Kentucky State Reformatory created such a liberty interest. Based upon certain language contained in the visitation procedures, the Sixth Circuit concluded that the prison policies placed "substantive limitations on official discretion by enumerating particularized standards or criteria to constrain the discretion of state decision makers." *Thompson v. Commonwealth of Kentucky*, 833 F.2d 614, 618-19 (6th Cir. 1987). A petition for rehearing, *en banc*, was denied by the Sixth Circuit on January 6, 1988.

ARGUMENT

I.

THE SIXTH CIRCUIT ERRED IN HOLDING THAT THE VISITATION PROCEDURES CREATED A LIBERTY INTEREST FOR THE INMATE PLAINTIFFS.

The central question posed to this Court in this case concerns the over-extension of this Court's test in *Hewitt v. Helms*, 459 U.S. 460 (1983), for determining whether a statute, regulation, or policy at a correctional institution, by its adoption, creates a liberty interest entitled the inmate to due process. The *Hewitt* test for determining whether a policy, procedure, or statute creates a liberty interest is stated as follows:

[The] repeated use of explicitly mandatory language in connection with requiring specific substantive predicates demands a conclusion that the state has created a protected liberty interest.

Id. at 472.² Of course, this Court in *Hewitt* further indicated that it had "never held that statutes and regulations governing daily operation of a prison system conferred any liberty interest in and of themselves." *Id.* at 469.³

² Justice Stevens, in his dissenting opinion in *Hewitt*, rejects this test, stating that "it does not matter whether the state uses a particular form of words in its laws or regulations or indeed whether it has adopted written rules at all." *Hewitt v. Helms*, 459 U.S. at 487, fn. 12 (Stevens, J., dissenting).

³ Moreover, the Sixth Circuit even admitted that prison inmates have no absolute constitutional right to visitation. *Thompson v. Commonwealth of Kentucky*, 833 F.2d at 617. Thus if prison officials chose to do so, visitation could be denied to all inmates in all circumstances without any constitutional violation.

Until this case, the decisions of this Court concerning creation of a liberty interest by a prison policy by and large have been limited to policies concerning the level or duration of confinement—not the day-to-day operation of a prison such as visitation privileges. *Hewitt v. Helms*, *supra*, (administrative segregation); *Greenholtz v. Inmates of Nebraska Penal and Correctional Institution*, 442 U.S. 1 (1979) (parole); *Wolff v. McDonnell*, 418 U.S. 539 (1974) (good time credits). Compare, *Olim v. Wakinekona*, 461 U.S. 238 (1983) (no liberty interest involving interstate transfer of inmate to maximum security facility); *Meachum v. Fano*, 427 U.S. 215 (1976) (no liberty interest in intra-state transfer of inmate from medium security facility to maximum security facility).

In particular, this Court in the *Wolff* decision, held that where the State of Nebraska had “not only provided a statutory right to good time, but also specified] that it is to be forfeited only for serious misbehavior . . .”, the state could not then deprive the inmate of that “liberty interest” without minimum due process procedures. *Wolff v. McDonnell*, 418 U.S. at 556-57. See also *Hewitt v. Helms*, 459 U.S. at 487 fn. 12 (Stevens, J., dissenting) (The state is not required to allow prisoners good time credits; however, if it establishes such a system, it may not arbitrarily deprive a prisoner of these credits on the ground that the prisoner has engaged in serious misbehavior unless its procedures for doing so are constitutionally adequate). This analysis rests upon the fact that the policy involved concerns the ultimate liberty of the inmate, i.e. shortening the duration of confinement.

The amici states contend that visitation policies are distinctly different than statutes, regulations, or policies re-

lating to an inmate's level or duration of confinement. On the one hand, level or duration of confinement relate directly to an inmate's ultimate liberty. Statutes or regulations establishing policies for parole and good time credit decisions clearly effect a prisoner's ultimate release from custody. Likewise, regulations regarding placement of an inmate in a greater restricted environment, i.e. administrative segregation, implicates that inmate's liberty interest within the context of the prison walls. *Thompson v. Commonwealth of Kentucky*, 833 F.2d at 617 (Wellford, J., concurring).

On the other hand, visitation policies which concern the security of the institution, in no way implicate any liberty interests. Rather, these policies relate to one of many aspects of the day-to-day operation of a correctional facility.⁴ Policies relating to the day-to-day operation of a correctional facility do not create a liberty interest when the subject of the policies, i.e. visitation, has no substantial relation to the ultimate liberty of the inmate.

Where a state establishes policies for parole or good time credits, those policies are established for the benefit of the inmate as a way of obtaining earlier release from custody. On the other hand, the visitation policies in this case were not promulgated as an entitlement for the benefit of the inmates, but rather to provide guidance for cor-

⁴ It should be emphasized that visitation is one of the few points of contact that an inmate has with the outside world. Security of the institution is at one of its greatest risks during visitation. Not only is there the risk of persons from the outside world smuggling contraband into the institution through an inmate for the purpose of escape, but also a serious risk exists for the smuggling of illicit drugs into the institution.

rectional officers in their decisionmaking process on an aspect of the daily operation of a correctional facility. See *Hewitt v. Helms*, 459 U.S. at 471.

The amici states also note that even if the *Hewitt* test applies in this case, it does not result in the conclusion reached by the Sixth Circuit. It is true that certain aspects of the visitation procedures of the Kentucky State Reformatory state that "an inmate is allowed three visits per week" and that "a visitor may be denied a visit at any time if [certain enumerated circumstances exist]". *Thompson v. Commonwealth of Kentucky*, 833 F.2d at 616. However, the visitation policies of the Kentucky State Reformatory also state that the "administrative staff reserves the right to allow or disallow visits". This language makes it clear that the policies are intended as guidelines for the decision maker and do not limit discretion in the decisionmaking process.

Moreover, the enumerated circumstances under which an inmate may be denied a visitor is where the visitor's presence would constitute a "clear and present danger to the safety and security of the institution or would interfere with the orderly operation of the institution." *Id.* The "safety and security of the institution" in this policy cannot be considered a substantive predicate when this Court has indicated that the "safety and security" of an institution is considered paramount in all cases. *O'Lone v. Shabazz*, 107 S.Ct. 2400 (1987).

Even though the application of the *Hewitt* test would not establish a liberty interest in the visitation policies in question, the amici states earnestly urge this Court to consider their argument that such a test is inapplicable in

the first instance since the policies do not concern the level or duration of confinement for the inmates in question. To extend the *Hewitt* test to procedures and policies relating to the daily operation of our country's correctional institutions will result in a step backward in time in the progress of this country's corrections system.

II.

APPLICATION OF THE HEWITT TEST TO CORRECTIONAL POLICIES REGARDING THE DAILY OPERATION OF PRISONS WOULD HAVE A SIGNIFICANT NEGATIVE IMPACT ON THE MANAGEMENT OF THIS COUNTRY'S STATE CORRECTIONAL INSTITUTIONS.

It simply would make no sense to broaden the scope of *Hewitt* to apply to all policies involving the daily operation of prisons beyond policies involving duration or level of confinement. As the amici states indicated in their brief in support of the petition for writ of certiorari, the expansion of *Hewitt* to policies involving the daily operation of prisons potentially would encompass a significant number of prison policies including but not limited to: (1) library privileges, (2) inmate job assignments, (3) inmate grievances, (4) inmate personal property, (5) telephone privileges, (6) educational services, (7) inmate organizations, (8) leisure time programs, (9) recreation facilities, and (10) inmate mail. See also, Petitioners' Brief, pp. 4a-12a.

The application of the *Hewitt* test to such policies might very well have the opposite effect of that intended by the plaintiff inmates. If this Court were to rule in favor of the plaintiff inmates, it is true that they would

be entitled to a due process hearing as to the denial of their visitation rights in this case. *Thompson v. Kentucky*, 833 F.2d at 619. However, there would be no constitutional impediment for the Kentucky Department of Corrections to dilute the language of the policy so as not to create a liberty interest or repeal the policy altogether.⁵ More significantly, corrections officials across the country would be encouraged by such a holding to reevaluate all policies effecting the daily operation of prisons.

In such an instance, these officials would be faced with a Hobson's choice: (1) retention of such policies which would provide guidance to correctional officers in their decisionmaking, but would also require due process hearings for inmates over every phase of institutional life, or (2) establishment of vague standards [or no standards at all] in order to avoid the creation of such a liberty interest. The former choice would result in innumerable due process hearings over minor matters and trivialize the Fourteenth Amendment. Such a choice would only be an unworkable managerial nightmare not to mention the disruption of the daily operation of the prison.⁶ On

⁵ As a matter of fact, the Tennessee Department of Corrections had amended its rules regarding parole to eliminate a liberty interest found by the Sixth Circuit. See *Mayes v. Trammell*, 751 F.2d 180 (6th Cir. 1984) (liberty interest created by language in parole rules); *Wright v. Trammell*, 810 F.2d 589 (6th Cir. 1987) (amended rule eliminated words from former rule which created a constitutionally protected liberty interest).

⁶ A significant increase in the number of such minimal due process hearings would require additional personnel to schedule and conduct such hearings. Of course prison officials could attempt to manage such a process; however, it is doubtful many would when the administrative problems could be solved by diluting or repealing the policies.

the other hand, dilution or repeal of the policies would be a step backward in the progress of prison management. As this Court stated in *Hewitt*:

The creation of procedural guidelines to channel decisionmaking of prison officials is, in the view of many experts in the field, a salutary development. It would be ironic to hold that when a state embarks on such desirable experimentation it thereby opens the door to scrutiny by federal courts, while states that choose not to adopt such procedural provisions entirely avoid the strictures of the due process clause.

Hewitt v. Helms, 459 U.S. at 471. Either choice would destroy the original purpose of such policies, i.e. to provide guidance to corrections officers in their decisionmaking process not entitlements to inmates.

A solution to this paradox is that correction officials outside of the area of policies relating to level or duration of confinement should be able to establish policies which provide guidance to their officers with the use of some mandatory language. See *Miller v. Henman*, 804 F.2d 421, 426 (7th Cir. 1986) (written rules that create no entitlements and no hearings). Accordingly, the amici states urge this Court to consider limiting *Hewitt* to policies which implicate an ultimate liberty interest such as parole, good time credits and administrative segregation.

CONCLUSION

Based upon the foregoing authorities and analysis, the amici states urge this Court to reverse the decision of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

W. J. MICHAEL CODY
Attorney General and Reporter
State of Tennessee

MICHAEL W. CATALANO
Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
(615) 741-3499